

110TH CONGRESS
2D SESSION

H. R. 6110

To provide for the reform of health care, the Social Security system, the tax code for individuals and business, and the budget process.

IN THE HOUSE OF REPRESENTATIVES

MAY 21, 2008

Mr. RYAN of Wisconsin introduced the following bill; which was referred to the Committee on Ways and Means, and in addition to the Committees on Energy and Commerce, Education and Labor, Rules, and the Budget, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

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A BILL

To provide for the reform of health care, the Social Security system, the tax code for individuals and business, and the budget process.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

4 (a) SHORT TITLE.—This Act may be cited as the
5 “Roadmap for America’s Future Act of 2008”.

6 (b) TABLE OF CONTENTS.—

Sec. 1. Short title; table of contents.

Sec. 2. Findings and purpose.

TITLE I—HEALTH CARE REFORM

Subtitle A—Tax Changes

- Sec. 101. Refundable credit for health insurance coverage.
- Sec. 102. Changes to existing tax preferences for medical coverage, etc., for individuals eligible for qualified health insurance credit.

Subtitle B—Health Plan Choice; Small Business Health Fairness

- Sec. 111. Cooperative governing of individual health insurance coverage.
- Sec. 112. Small business health fairness.

Subtitle C—Health Care Services Commission

PART 1—ESTABLISHMENT AND GENERAL DUTIES

- Sec. 121. Establishment.
- Sec. 122. General authorities and duties.
- Sec. 123. Dissemination.

PART 2—FORUM FOR QUALITY AND EFFECTIVENESS IN HEALTH CARE

- Sec. 131. Establishment of office.
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- Sec. 133. Duties.
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- Sec. 135. Additional requirements.

PART 3—GENERAL PROVISIONS

- Sec. 141. Certain administrative authorities.
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PART 4—TERMINATIONS AND TRANSITION

- Sec. 151. Termination of Agency for Healthcare Research and Quality.
- Sec. 152. Transition.

PART 5—INDEPENDENT HEALTH RECORD TRUST

- Sec. 161. Short title of part.
- Sec. 162. Purpose.
- Sec. 163. Definitions.
- Sec. 164. Establishment, certification, and membership of independent health record trusts.
- Sec. 165. Duties of IHRT to IHRT participants.
- Sec. 166. Availability and use of information from records in IHRT consistent with privacy protections and agreements.
- Sec. 167. Voluntary nature of trust participation and information sharing.
- Sec. 168. Financing of activities.
- Sec. 169. Regulatory oversight.

TITLE II—MEDICAID AND SCHIP REFORM

- Sec. 201. Medicaid reform.
- Sec. 202. SCHIP Reform.

TITLE III—MEDICARE REFORM

Subtitle A—New Medicare Program

- Sec. 301. Benefit changes.
- Sec. 302. Increase in Medicare eligibility age.
- Sec. 303. Unified Medicare Trust Fund.

Subtitle B—Changes in Current Medicare Program

- Sec. 311. Income-related reduction in part D premium subsidy.
- Sec. 312. Reduction in hospital marketbasket increases.
- Sec. 313. Elimination of indexing of income thresholds for part B income-related premiums.

TITLE IV—SOCIAL SECURITY REFORM

- Sec. 401. Short title and table of contents of title.
- Sec. 402. Establishment of Personal Social Security Savings Program.
- Sec. 403. Monthly insurance benefits for participating individuals.
- Sec. 404. Tax treatment of accounts.
- Sec. 405. Self-Liquidating Social Security Transition Fund.
- Sec. 406. Budgetary treatment of social security.
- Sec. 407. Accounting for the Old-Age, Survivors, and Disability Insurance Program and the Personal Social Security Savings Program.
- Sec. 408. Progressive indexing of benefits for old-age, wife's, and husband's insurance benefits.
- Sec. 409. Enhancements to part A benefits.
- Sec. 410. Adjustments to schedule for increases in normal retirement age.

TITLE V—SIMPLIFIED INCOME TAX

- Sec. 501. Short title.
- Sec. 502. Repeal of alternative minimum tax for noncorporate taxpayers.
- Sec. 503. Simplified income tax system.
- Sec. 504. Exclusion for capital gains, dividends, and interest.
- Sec. 505. Repeal of estate and gift taxes.

TITLE VI—BUSINESS CONSUMPTION TAX

- Sec. 601. Short title.
- Sec. 602. Repeal of corporate income tax; new tax paid by corporations and other businesses.
- Sec. 603. Repeal of chapter 6.
- Sec. 604. Revisions to the Code.
- Sec. 605. Application of subtitle F.
- Sec. 606. Effective dates.

TITLE VII—BUDGET ENFORCEMENT

- Sec. 701. Short title; table of contents; definitions.
- Sec. 702. Long-term projections.
- Sec. 703. Preview spending reduction order.
- Sec. 704. Final spending reduction order.
- Sec. 705. Eliminating excess spending amounts.
- Sec. 706. Special procedures.
- Sec. 707. Suspension in the event of war or low growth.

Sec. 708. Alternate spending reduction legislation in the House of Representatives.

Sec. 709. Alternate spending reduction legislation in the Senate.

Sec. 710. General provisions.

Sec. 711. Effective date.

1 **SEC. 2. FINDINGS AND PURPOSE.**

2 (a) FINDINGS.—The Congress finds as follows:

3 (1) The social insurance strategies of the past
4 century, which sprang from the New Deal, expanded
5 in the Great Society, and continue to dominate the
6 terms of public debate, are headed toward collapse.

7 (2) Although Americans remain committed to
8 the missions of these initiatives, the goals can no
9 longer be met on models created nearly 80 years
10 ago—with large, centralized institutions, especially
11 government, serving as sole providers for an increas-
12 ingly dependent population.

13 (3) The failure of this approach will not occur
14 immediately, it will unfold over the next several dec-
15 ades, becoming more intractable with each suc-
16 ceeding year; but it is inevitable, and policies in
17 place right now, today, are leading inexorably toward
18 it.

19 (4) Among the inescapable signs are the fol-
20 lowing: an unsustainable path of Government spend-
21 ing; levels of projected debt that threaten to bank-
22 rupt the country; trillions of dollars of unfunded li-
23 abilities in the Government's major benefit pro-

grams; and the erosion of Americans' security and confidence in health care and retirement.

(5) These conditions pose significant potential burdens not only for the Government, but for the United States economy as well, threatening its ability to continue raising standards of living, and its leadership in an increasingly international marketplace.

(6) A comprehensive plan is needed, and this legislation aims to energize the productive capacities of Americans to generate sustained economic growth.

(b) PURPOSE.—The purpose of this Act is as follows:

(1) HEALTH CARE REFORM.—To provide access to health care coverage to 47 million uninsured Americans by establishing a new tax credit; to reform health insurance markets, high-risk pools, and electronic health records; and to create a new agency to promote the dissemination of industry-defined health care price and quality data.

(2) MEDICAID AND SCHIP REFORM.—To improve health care coverage for those who need it most by establishing a new option for States' Medicaid and SCHIP programs.

1 (3) MEDICARE REFORM.—To ensure the Medi-
2 care benefit continues to provide health care cov-
3 erage for seniors by establishing a new methodology
4 to make the program solvent and fiscally sustain-
5 able.

6 (4) SOCIAL SECURITY REFORM.—To reform so-
7 cial security to ensure retirement security for future
8 generations and to make it solvent for the foresee-
9 able future; to address inequities in the system and
10 provide millions of Americans with the opportunity
11 to build a retirement nest egg that they can pass on
12 to their heirs.

13 (5) INDIVIDUAL INCOME TAX REFORM.—To
14 offer taxpayers a choice in paying their Federal in-
15 come taxes; to allow individuals to choose between
16 the current tax code or a highly simplified tax sys-
17 tem with virtually no deductions or credits (apart
18 from an individual health care credit), two low tax
19 rates and a generous standard deduction and per-
20 sonal exemption; to fully repeal the alternative min-
21 imum tax (AMT), eliminate the tax on interest, cap-
22 ital gains and dividends in order to promote saving;
23 and to repeal the estate tax.

24 (6) BUSINESS TAX REFORM.—To eliminate the
25 United States. corporate income tax and establishes

a border-adjustable business consumption tax in its place; to provide a new method of business taxation that will level the playing field for United States businesses to compete with foreign businesses and will promote sustained economic growth, investment and job creation in America.

(7) BUDGET PROCESS.—To keep total spending of the Government under control, a limit on total outlays as a percentage of the gross domestic produce is established; and enforced by automatic spending controls if it is exceeded.

TITLE I—HEALTH CARE REFORM

Subtitle A—Tax Changes

SEC. 101. REFUNDABLE CREDIT FOR HEALTH INSURANCE COVERAGE.

(a) IN GENERAL.—Subpart C of part IV of subchapter A of chapter 1 of the Internal Revenue Code of 1986 (relating to refundable credits) is amended by redesignating section 36 as section 37 and by inserting after section 35 the following new section:

“SEC. 36. QUALIFIED HEALTH INSURANCE CREDIT.

“(a) ALLOWANCE OF CREDIT.—In the case of an individual, there shall be allowed as a credit against the tax imposed by this chapter for the taxable year the sum of the monthly limitations determined under subsection (b)

1 for the taxpayer and the taxpayer's spouse and depend-
2 ents.

3 “(b) MONTHLY LIMITATION.—

4 “(1) IN GENERAL.—The monthly limitation for
5 each month during the taxable year for an eligible
6 individual is $\frac{1}{12}$ th of—

7 “(A) the applicable adult amount, in the
8 case that the eligible individual is the taxpayer
9 or the taxpayer's spouse,

10 “(B) the applicable adult amount, in the
11 case that the eligible individual is an adult de-
12 pendent, and

13 “(C) the applicable child amount, in the
14 case that the eligible individual is a child de-
15 pendent.

16 “(2) LIMITATION ON AGGREGATE AMOUNT.—
17 Notwithstanding paragraph (1), the aggregate
18 monthly limitations for the taxpayer and the tax-
19 payer's spouse and dependents for any month shall
20 not exceed $\frac{1}{12}$ th of the applicable aggregate amount.

21 “(3) NO CREDIT FOR INELIGIBLE MONTHS.—
22 With respect to any individual, the monthly limita-
23 tion shall be zero for any month for which such indi-
24 vidual is not an eligible individual.

1 “(c) APPLICABLE AMOUNTS.—For purposes of this
2 section—

3 “(1) APPLICABLE ADULT AMOUNT.—The term
4 ‘applicable adult amount’ means \$2,500.

5 “(2) APPLICABLE CHILD AMOUNT.—The term
6 ‘applicable child amount’ means \$1,000.

7 “(3) APPLICABLE AGGREGATE AMOUNT.—The
8 term ‘applicable aggregate amount’ means \$5,000.

9 “(d) ELIGIBLE INDIVIDUAL.—For purposes of this
10 section—

11 “(1) IN GENERAL.—The term ‘eligible indi-
12 vidual’ means, with respect to any month, an indi-
13 vidual who—

14 “(A) is the taxpayer, the taxpayer’s
15 spouse, or the taxpayer’s dependent, and

16 “(B) is covered under qualified health in-
17 surance as of the 1st day of such month.

18 “(2) COVERAGE UNDER MEDICARE, MEDICAID,
19 SCHIP, MILITARY COVERAGE.—The term ‘eligible in-
20 dividual’ shall not include any individual for a month
21 if, as of the first day of such month, such individual
22 is—

23 “(A) entitled to benefits under part A of
24 title XVIII of the Social Security Act or en-
25 rolled under part B of such title, and the indi-

1 vidual is not a participant or beneficiary in a
2 group health plan or large group health plan
3 that is a primary plan (as defined in section
4 1862(b)(2)(A) of such Act),

5 “(B) in the case of a State that has not
6 made the election described in section
7 1939(a)(1)(B) of the Social Security Act, en-
8 rolled in the program under title XIX of such
9 Act (other than under section 1928 of such
10 Act), or

11 “(C) entitled to benefits under chapter 55
12 of title 10, United States Code.

13 “(3) IDENTIFICATION REQUIREMENTS.—The
14 term ‘eligible individual’ shall not include any indi-
15 vidual for any month unless the policy number asso-
16 ciated with the qualified refund eligible health insur-
17 ance and the TIN of each eligible individual covered
18 under such health insurance for such month are in-
19 cluded on the return of tax for the taxable year in
20 which such month occurs.

21 “(4) PRISONERS.—The term ‘eligible individual’
22 shall not include any individual for a month if, as
23 of the first day of such month, such individual is im-
24 prisoned under Federal, State, or local authority.

1 “(5) ALIENS.—The term ‘eligible individual’
2 shall not include any alien individual for a month if,
3 as of the first day of such month, such individual is
4 not a lawful permanent resident of the United
5 States.

6 “(e) QUALIFIED HEALTH INSURANCE.—For pur-
7 poses of this section, the term ‘qualified health insurance’
8 means any insurance constituting medical care which (as
9 determined under regulations prescribed by the Secretary)
10 provides coverage for inpatient and outpatient care, emer-
11 gency benefits, and physician care. Such term does not
12 include any insurance substantially all of the coverage of
13 which is coverage described in section 223(c)(1)(B).

14 “(f) OTHER DEFINITIONS.—For purposes of this sec-
15 tion—

16 “(1) DEPENDENT.—The term ‘dependent’ has
17 the meaning given such term by section 152 (deter-
18 mined without regard to subsections (b)(1), (b)(2),
19 and (d)(1)(B) thereof). An individual who is a child
20 to whom section 152(e) applies shall be treated as
21 a dependent of the custodial parent for a coverage
22 month unless the custodial and noncustodial parent
23 agree otherwise.

24 “(2) ADULT.—The term ‘adult’ means an indi-
25 vidual who is not a child.

1 “(3) CHILD.—The term ‘child’ means a quali-
2 fying child (as defined in section 152(c)).

3 “(g) SPECIAL RULES.—

4 “(1) COORDINATION WITH MEDICAL DEDUC-
5 TION, ETC.—Any amount paid by a taxpayer for in-
6 surance to which subsection (a) applies shall not be
7 taken into account in computing the amount allow-
8 able to the taxpayer as a credit under section 35 or
9 as a deduction under section 213(a).

10 “(2) MEDICAL AND HEALTH SAVINGS AC-
11 COUNTS.—The credit allowed under subsection (a)
12 for any taxable year shall be reduced by the aggre-
13 gate amount distributed from Archer MSAs (as de-
14 fined in section 220(d)) and health savings accounts
15 (as defined in section 223(d)) which are excludable
16 from gross income for such taxable years by reason
17 of being used to pay premiums for coverage of an
18 eligible individual (as defined in section 25E(e))
19 under qualified health insurance (as defined in sec-
20 tion 25E(f)) for any month.

21 “(3) DENIAL OF CREDIT TO DEPENDENTS.—No
22 credit shall be allowed under this section to any indi-
23 vidual with respect to whom a deduction under sec-
24 tion 151 is allowable to another taxpayer for a tax-

1 able year beginning in the calendar year in which
2 such individual's taxable year begins.

3 “(4) MARRIED COUPLES MUST FILE JOINT RE-
4 TURN.—

5 “(A) IN GENERAL.—If the taxpayer is
6 married at the close of the taxable year, the
7 credit shall be allowed under subsection (a) only
8 if the taxpayer and his spouse file a joint return
9 for the taxable year.

10 “(B) MARITAL STATUS; CERTAIN MARRIED
11 INDIVIDUALS LIVING APART.—Rules similar to
12 the rules of paragraphs (3) and (4) of section
13 21(e) shall apply for purposes of this para-
14 graph.

15 “(5) VERIFICATION OF COVERAGE, ETC.—No
16 credit shall be allowed under this section with re-
17 spect to any individual unless such individual's cov-
18 erage (and such related information as the Secretary
19 may require) is verified in such manner as the Sec-
20 retary may prescribe.

21 “(6) INSURANCE WHICH COVERS OTHER INDIV-
22 VIDUALS; TREATMENT OF PAYMENTS.—Rules similar
23 to the rules of paragraphs (7) and (8) of section
24 35(g) shall apply for purposes of this section.

25 “(h) COORDINATION WITH ADVANCE PAYMENTS.—

1 “(1) REDUCTION IN CREDIT FOR ADVANCE PAY-
2 MENTS.—With respect to any taxable year, the
3 amount which would (but for this subsection) be al-
4 lowed as a credit to the taxpayer under subsection
5 (a) shall be reduced (but not below zero) by the ag-
6 gregate amount paid on behalf of such taxpayer
7 under section 7527A for months beginning in such
8 taxable year.

9 “(2) RECAPTURE OF EXCESS ADVANCE PAY-
10 MENTS.—If the aggregate amount paid on behalf of
11 the taxpayer under section 7527A for months begin-
12 ning in the taxable year exceeds the sum of the
13 monthly limitations determined under subsection (b)
14 for the taxpayer and the taxpayer’s spouse and de-
15 pendents for such months, then the tax imposed by
16 this chapter for such taxable year shall be increased
17 by the sum of—

18 “(A) such excess, plus

19 “(B) interest on such excess determined at
20 the underpayment rate established under sec-
21 tion 6621 for the period from the date of the
22 payment under section 7527A to the date such
23 excess is paid.

24 For purposes of subparagraph (B), an equal part of
25 the aggregate amount of the excess shall be deemed

1 to be attributable to payments made under section
2 7527A on the first day of each month beginning in
3 such taxable year, unless the taxpayer establishes
4 the date on which each such payment giving rise to
5 such excess occurred, in which case subparagraph
6 (B) shall be applied with respect to each date so es-
7 tablished.

8 “(i) ANNUAL INFLATION ADJUSTMENT.—In the case
9 of any taxable year beginning in a calendar year after
10 2009, each of the dollar amounts contained in subsection
11 (c) shall be annually increased by the annual inflation ad-
12 justment determined under subparagraph (B) section
13 1809(c)(2) of the Social Security Act for such calendar
14 year. Any adjustment under the preceding sentence shall
15 be rounded in the manner described in subparagraph (A)
16 of such section.”.

17 (b) ADVANCE PAYMENT OF CREDIT.—Chapter 77
18 (relating to miscellaneous provisions) of such Code is
19 amended by inserting after section 7527 the following new
20 section:

21 **“SEC. 7527A. ADVANCE PAYMENT OF QUALIFIED HEALTH**
22 **INSURANCE CREDIT.**

23 “(a) IN GENERAL.—The Secretary shall establish a
24 program for making payments on behalf of individuals to

1 providers of qualified health insurance (as defined in sec-
2 tion 36(f)) for such individuals.

3 “(b) LIMITATION.—The Secretary may make pay-
4 ments under subsection (a) only to the extent that the Sec-
5 retary determines that the amount of such payments made
6 on behalf of any taxpayer for any month does not exceed
7 the sum of the monthly limitations determined under sec-
8 tion 36 for the taxpayer and taxpayer’s spouse and de-
9 pendants for such month.”.

10 (c) INFORMATION REPORTING.—

11 (1) IN GENERAL.—Subpart B of part III of
12 subchapter A of chapter 61 of such Code (relating
13 to information concerning transactions with other
14 persons) is amended by inserting after section
15 6050V the following new section:

16 **“SEC. 6050W. RETURNS RELATING TO QUALIFIED HEALTH**
17 **INSURANCE CREDIT.**

18 “(a) REQUIREMENT OF REPORTING.—Every person
19 who is entitled to receive payments for any month of any
20 calendar year under section 7527A (relating to advance
21 payment of qualified health insurance credit) with respect
22 to any individual shall, at such time as the Secretary may
23 prescribe, make the return described in subsection (b) with
24 respect to each such individual.

1 “(b) FORM AND MANNER OF RETURNS.—A return
2 is described in this subsection if such return—

3 “(1) is in such form as the Secretary may pre-
4 scribe, and

5 “(2) contains, with respect to each individual
6 referred to in subsection (a)—

7 “(A) the name, address, and TIN of each
8 such individual,

9 “(B) the months for which amounts pay-
10 ments under section 7527A were received,

11 “(C) the amount of each such payment,

12 “(D) the type of insurance coverage pro-
13 vide by such person with respect to such indi-
14 vidual and the policy number associated with
15 such coverage,

16 “(E) the name, address, and TIN of the
17 spouse and each dependent covered under such
18 coverage, and

19 “(F) such other information as the Sec-
20 retary may prescribe.

21 “(c) STATEMENTS TO BE FURNISHED TO INDIVID-
22 UALS WITH RESPECT TO WHOM INFORMATION IS RE-
23 QUIRED.—Every person required to make a return under
24 subsection (a) shall furnish to each individual whose name

1 is required to be set forth in such return a written state-
2 ment showing—

3 “(1) the name and address of the person re-
4 quired to make such return and the phone number
5 of the information contact for such person, and

6 “(2) the information required to be shown on
7 the return with respect to such individual.

8 The written statement required under the preceding sen-
9 tence shall be furnished on or before January 31 of the
10 year following the calendar year for which the return
11 under subsection (a) is required to be made.

12 “(d) RETURNS WHICH WOULD BE REQUIRED TO BE
13 MADE BY 2 OR MORE PERSONS.—Except to the extent
14 provided in regulations prescribed by the Secretary, in the
15 case of any amount received by any person on behalf of
16 another person, only the person first receiving such
17 amount shall be required to make the return under sub-
18 section (a).”.

19 (2) ASSESSABLE PENALTIES.—

20 (A) Subparagraph (B) of section
21 6724(d)(1) (relating to definitions) of such
22 Code is amended by redesignating clauses (xv)
23 through (xxi) as clauses (xvi) through (xxii), re-
24 spectively, and by inserting after clause (xiv)
25 the following new clause:

1 “(xv) section 6050W (relating to re-
2 turns relating to qualified health insurance
3 credit),”.

4 (B) Paragraph (2) of section 6724(d) of
5 such Code is amended by striking the period at
6 the end of subparagraph (CC) and inserting “,
7 or” and by inserting after subparagraph (CC)
8 the following new subparagraph:

9 “(DD) section 6050W (relating to returns
10 relating to qualified health insurance credit).”.

11 (d) CONFORMING AMENDMENTS.—

12 (1) Paragraph (2) of section 1324(b) of title
13 31, United States Code, is amended by inserting “or
14 36” after “section 35”.

15 (2) The table of sections for subpart C of part
16 IV of subchapter A of chapter 1 of the Internal Rev-
17 enue Code of 1986 is amended by redesignating the
18 item relating to section 36 as an item relating to
19 section 37 and by inserting after the item relating
20 to section 35 the following new item:

“Sec. 36. Qualified health insurance credit.”.

21 (3) The table of sections for chapter 77 of such
22 Code is amended by inserting after the item relating
23 to section 7527 the following new item:

“Sec. 7527A. Advance payment of qualified health insurance credit.”.

1 (4) The table of sections for subpart B of part
 2 III of subchapter A of chapter 61 of such Code is
 3 amended by adding at the end the following new
 4 item:

“Sec. 6050W. Returns relating to qualified health insurance credit.”.

5 (e) **EFFECTIVE DATE.**—The amendments made by
 6 this section shall apply to taxable years beginning after
 7 December 31, 2008.

8 **SEC. 102. CHANGES TO EXISTING TAX PREFERENCES FOR**
 9 **MEDICAL COVERAGE, ETC., FOR INDIVIDUALS**
 10 **ELIGIBLE FOR QUALIFIED HEALTH INSUR-**
 11 **ANCE CREDIT.**

12 (a) **EXCLUSION FOR CONTRIBUTIONS BY EMPLOYER**
 13 **TO ACCIDENT AND HEALTH PLANS.**—

14 (1) **IN GENERAL.**—Section 106 of the Internal
 15 Revenue Code of 1986 (relating to contributions by
 16 employer to accident and health plans) is amended
 17 by adding at the end the following new subsection:

18 “(f) **NO EXCLUSION FOR INDIVIDUALS ELIGIBLE**
 19 **FOR QUALIFIED HEALTH INSURANCE CREDIT.**—Sub-
 20 section (a) shall not apply with respect to any employer-
 21 provided coverage under an accident or health plan for any
 22 individual for any month unless such individual is de-
 23 scribed in paragraph (2) or (5) of section 36(e) for such
 24 month. The amount includible in gross income by reason

1 of this subsection shall be determined under rules similar
2 to the rules of section 4980B(f)(4).”.

3 (2) CONFORMING AMENDMENTS.—

4 (A) Section 106(b)(1) of such Code is
5 amended—

6 (i) by inserting “gross income does
7 not include” before “amounts contrib-
8 uted”, and

9 (ii) by striking “shall be treated as
10 employer-provided coverage for medical ex-
11 penses under an accident or health plan”.

12 (B) Section 106(d)(1) of such Code is
13 amended—

14 (i) by inserting “gross income does
15 not include” before “amounts contrib-
16 uted”, and

17 (ii) by striking “shall be treated as
18 employer-provided coverage for medical ex-
19 penses under an accident or health plan”.

20 (b) AMOUNTS RECEIVED UNDER ACCIDENT AND
21 HEALTH PLANS.—

22 (1) IN GENERAL.—Section 105 of such Code
23 (relating to amounts received under accident and
24 health plans) is amended by adding at the end the
25 following new subsection:

1 “(f) NO EXCLUSION FOR INDIVIDUALS ELIGIBLE
2 FOR QUALIFIED HEALTH INSURANCE CREDIT.—Sub-
3 section (b) shall not apply with respect to any employer-
4 provided coverage under an accident or health plan for any
5 individual for any month unless such individual is de-
6 scribed in paragraph (2) or (5) of section 36(e) for such
7 month.”.

8 (c) SPECIAL RULES FOR HEALTH INSURANCE COSTS
9 OF SELF-EMPLOYED INDIVIDUALS.—Subsection (l) of
10 section 162 of such Code (relating to special rules for
11 health insurance costs of self-employed individuals) is
12 amended by adding at the end the following new para-
13 graph:

14 “(6) NO DEDUCTION TO INDIVIDUALS ELIGIBLE
15 FOR QUALIFIED HEALTH INSURANCE.—Paragraph
16 (1) shall not apply for any individual for any month
17 unless such individual is described in paragraph (2)
18 or (5) of section 36(e) for such month.”.

19 (d) EARNED INCOME CREDIT UNAFFECTED BY RE-
20 PEATED EXCLUSIONS.—Subparagraph (B) of section
21 32(c)(2) of such Code is amended by redesignating clauses
22 (v) and (vi) as clauses (vi) and (vii), respectively, and by
23 inserting after clause (iv) the following new clause:

1 “(v) the earned income of an indi-
2 vidual shall be computed without regard to
3 sections 105(f) and 106(f),”.

4 (e) MODIFICATION OF DEDUCTION FOR MEDICAL
5 EXPENSES.—Subsection (d) of section 213 of such Code
6 is amended by adding at the end the following new para-
7 graph:

8 “(12) PREMIUMS FOR QUALIFIED HEALTH IN-
9 SURANCE.—The term ‘medical care’ does not include
10 any amount paid as a premium for coverage of an
11 eligible individual (as defined in section 36(e)) under
12 qualified health insurance (as defined in section
13 36(f)) for any month.”.

14 (f) REPORTING REQUIREMENT.—Subsection (a) of
15 section 6051 of such Code is amended by striking “and”
16 at the end of paragraph (12), by striking the period at
17 the end of paragraph (13) and inserting “and”, and by
18 inserting after paragraph (13) the following new para-
19 graph:

20 “(14) the total amount of employer-provided
21 coverage under an accident or health plan which is
22 includible in gross income by reason of sections
23 105(f) and 106(f).”.

24 (g) RETIRED PUBLIC SAFETY OFFICERS.—Section
25 402(l)(4)(D) of such Code is amended by adding at the

1 end the following: “Such term shall not include any pre-
 2 mium for coverage by an accident or health insurance plan
 3 for any month unless such individual is described in para-
 4 graph (2) or (5) of section 36(e) for such month.”.

5 (h) EMPLOYER DEDUCTION AS TRADE OR BUSINESS
 6 EXPENSE UNAFFECTED.—For the allowance of a deduc-
 7 tion for amounts paid or incurred by an employer for em-
 8 ployee health benefits, see section 162 of the Internal Rev-
 9 enue Code of 1986 (relating to trade or business ex-
 10 penses).

11 (i) EFFECTIVE DATE.—The amendments made by
 12 this section shall apply to taxable years beginning after
 13 December 31, 2008.

14 **Subtitle B—Health Plan Choice;**
 15 **Small Business Health Fairness**

16 **SEC. 111. COOPERATIVE GOVERNING OF INDIVIDUAL**
 17 **HEALTH INSURANCE COVERAGE.**

18 (a) IN GENERAL.—Title XXVII of the Public Health
 19 Service Act (42 U.S.C. 300gg et seq.) is amended by add-
 20 ing at the end the following new part:

21 **“PART D—COOPERATIVE GOVERNING OF**
 22 **INDIVIDUAL HEALTH INSURANCE COVERAGE**

23 **“SEC. 2795. DEFINITIONS.**

24 “In this part:

1 “(1) PRIMARY STATE.—The term ‘primary
2 State’ means, with respect to individual health insur-
3 ance coverage offered by a health insurance issuer,
4 the State designated by the issuer as the State
5 whose covered laws shall govern the health insurance
6 issuer in the sale of such coverage under this part.
7 An issuer, with respect to a particular policy, may
8 only designate one such State as its primary State
9 with respect to all such coverage it offers. Such an
10 issuer may not change the designated primary State
11 with respect to individual health insurance coverage
12 once the policy is issued, except that such a change
13 may be made upon renewal of the policy. With re-
14 spect to such designated State, the issuer is deemed
15 to be doing business in that State.

16 “(2) SECONDARY STATE.—The term ‘secondary
17 State’ means, with respect to individual health insur-
18 ance coverage offered by a health insurance issuer,
19 any State that is not the primary State. In the case
20 of a health insurance issuer that is selling a policy
21 in, or to a resident of, a secondary State, the issuer
22 is deemed to be doing business in that secondary
23 State.

24 “(3) HEALTH INSURANCE ISSUER.—The term
25 ‘health insurance issuer’ has the meaning given such

1 term in section 2791(b)(2), except that such an
2 issuer must be licensed in the primary State and be
3 qualified to sell individual health insurance coverage
4 in that State.

5 “(4) INDIVIDUAL HEALTH INSURANCE COV-
6 ERAGE.—The term ‘individual health insurance cov-
7 erage’ means health insurance coverage offered in
8 the individual market, as defined in section
9 2791(e)(1).

10 “(5) APPLICABLE STATE AUTHORITY.—The
11 term ‘applicable State authority’ means, with respect
12 to a health insurance issuer in a State, the State in-
13 surance commissioner or official or officials des-
14 ignated by the State to enforce the requirements of
15 this title for the State with respect to the issuer.

16 “(6) HAZARDOUS FINANCIAL CONDITION.—The
17 term ‘hazardous financial condition’ means that,
18 based on its present or reasonably anticipated finan-
19 cial condition, a health insurance issuer is unlikely
20 to be able—

21 “(A) to meet obligations to policyholders
22 with respect to known claims and reasonably
23 anticipated claims; or

24 “(B) to pay other obligations in the normal
25 course of business.

“(7) COVERED LAWS.—

“(A) IN GENERAL.—The term ‘covered laws’ means the laws, rules, regulations, agreements, and orders governing the insurance business pertaining to—

“(i) individual health insurance coverage issued by a health insurance issuer;

“(ii) the offer, sale, rating (including medical underwriting), renewal, and issuance of individual health insurance coverage to an individual;

“(iii) the provision to an individual in relation to individual health insurance coverage of health care and insurance related services;

“(iv) the provision to an individual in relation to individual health insurance coverage of management, operations, and investment activities of a health insurance issuer; and

“(v) the provision to an individual in relation to individual health insurance coverage of loss control and claims administration for a health insurance issuer with

1 respect to liability for which the issuer pro-
2 vides insurance.

3 “(B) EXCEPTION.—Such term does not in-
4 clude any law, rule, regulation, agreement, or
5 order governing the use of care or cost manage-
6 ment techniques, including any requirement re-
7 lated to provider contracting, network access or
8 adequacy, health care data collection, or quality
9 assurance.

10 “(8) STATE.—The term ‘State’ means the 50
11 States and includes the District of Columbia, Puerto
12 Rico, the Virgin Islands, Guam, American Samoa,
13 and the Northern Mariana Islands.

14 “(9) UNFAIR CLAIMS SETTLEMENT PRAC-
15 TICES.—The term ‘unfair claims settlement prac-
16 tices’ means only the following practices:

17 “(A) Knowingly misrepresenting to claim-
18 ants and insured individuals relevant facts or
19 policy provisions relating to coverage at issue.

20 “(B) Failing to acknowledge with reason-
21 able promptness pertinent communications with
22 respect to claims arising under policies.

23 “(C) Failing to adopt and implement rea-
24 sonable standards for the prompt investigation
25 and settlement of claims arising under policies.

1 “(D) Failing to effectuate prompt, fair,
2 and equitable settlement of claims submitted in
3 which liability has become reasonably clear.

4 “(E) Refusing to pay claims without con-
5 ducting a reasonable investigation.

6 “(F) Failing to affirm or deny coverage of
7 claims within a reasonable period of time after
8 having completed an investigation related to
9 those claims.

10 “(G) A pattern or practice of compelling
11 insured individuals or their beneficiaries to in-
12 stitute suits to recover amounts due under its
13 policies by offering substantially less than the
14 amounts ultimately recovered in suits brought
15 by them.

16 “(H) A pattern or practice of attempting
17 to settle or settling claims for less than the
18 amount that a reasonable person would believe
19 the insured individual or his or her beneficiary
20 was entitled by reference to written or printed
21 advertising material accompanying or made
22 part of an application.

23 “(I) Attempting to settle or settling claims
24 on the basis of an application that was materi-

1 ally altered without notice to, or knowledge or
2 consent of, the insured.

3 “(J) Failing to provide forms necessary to
4 present claims within 15 calendar days of a re-
5 quests with reasonable explanations regarding
6 their use.

7 “(K) Attempting to cancel a policy in less
8 time than that prescribed in the policy or by the
9 law of the primary State.

10 “(10) FRAUD AND ABUSE.—The term ‘fraud
11 and abuse’ means an act or omission committed by
12 a person who, knowingly and with intent to defraud,
13 commits, or conceals any material information con-
14 cerning, one or more of the following:

15 “(A) Presenting, causing to be presented
16 or preparing with knowledge or belief that it
17 will be presented to or by an insurer, a rein-
18 surer, broker or its agent, false information as
19 part of, in support of or concerning a fact ma-
20 terial to one or more of the following:

21 “(i) An application for the issuance or
22 renewal of an insurance policy or reinsur-
23 ance contract.

24 “(ii) The rating of an insurance policy
25 or reinsurance contract.

1 “(iii) A claim for payment or benefit
2 pursuant to an insurance policy or reinsur-
3 ance contract.

4 “(iv) Premiums paid on an insurance
5 policy or reinsurance contract.

6 “(v) Payments made in accordance
7 with the terms of an insurance policy or
8 reinsurance contract.

9 “(vi) A document filed with the com-
10 missioner or the chief insurance regulatory
11 official of another jurisdiction.

12 “(vii) The financial condition of an in-
13 surer or reinsurer.

14 “(viii) The formation, acquisition,
15 merger, reconsolidation, dissolution or
16 withdrawal from one or more lines of in-
17 surance or reinsurance in all or part of a
18 State by an insurer or reinsurer.

19 “(ix) The issuance of written evidence
20 of insurance.

21 “(x) The reinstatement of an insur-
22 ance policy.

23 “(B) Solicitation or acceptance of new or
24 renewal insurance risks on behalf of an insurer
25 reinsurer or other person engaged in the busi-

1 ness of insurance by a person who knows or
2 should know that the insurer or other person
3 responsible for the risk is insolvent at the time
4 of the transaction.

5 “(C) Transaction of the business of insur-
6 ance in violation of laws requiring a license, cer-
7 tificate of authority or other legal authority for
8 the transaction of the business of insurance.

9 “(D) Attempt to commit, aiding or abet-
10 ting in the commission of, or conspiracy to com-
11 mit the acts or omissions specified in this para-
12 graph.

13 **“SEC. 2796. APPLICATION OF LAW.**

14 “(a) IN GENERAL.—The covered laws of the primary
15 State shall apply to individual health insurance coverage
16 offered by a health insurance issuer in the primary State
17 and in any secondary State, but only if the coverage and
18 issuer comply with the conditions of this section with re-
19 spect to the offering of coverage in any secondary State.

20 “(b) EXEMPTIONS FROM COVERED LAWS IN A SEC-
21 ONDARY STATE.—Except as provided in this section, a
22 health insurance issuer with respect to its offer, sale, rat-
23 ing (including medical underwriting), renewal, and
24 issuance of individual health insurance coverage in any
25 secondary State is exempt from any covered laws of the

1 secondary State (and any rules, regulations, agreements,
2 or orders sought or issued by such State under or related
3 to such covered laws) to the extent that such laws would—

4 “(1) make unlawful, or regulate, directly or in-
5 directly, the operation of the health insurance issuer
6 operating in the secondary State, except that any
7 secondary State may require such an issuer—

8 “(A) to pay, on a nondiscriminatory basis,
9 applicable premium and other taxes (including
10 high risk pool assessments) which are levied on
11 insurers and surplus lines insurers, brokers, or
12 policyholders under the laws of the State;

13 “(B) to register with and designate the
14 State insurance commissioner as its agent solely
15 for the purpose of receiving service of legal doc-
16 uments or process;

17 “(C) to submit to an examination of its fi-
18 nancial condition by the State insurance com-
19 missioner in any State in which the issuer is
20 doing business to determine the issuer’s finan-
21 cial condition, if—

22 “(i) the State insurance commissioner
23 of the primary State has not done an ex-
24 amination within the period recommended

1 by the National Association of Insurance
2 Commissioners; and

3 “(ii) any such examination is con-
4 ducted in accordance with the examiners’
5 handbook of the National Association of
6 Insurance Commissioners and is coordi-
7 nated to avoid unjustified duplication and
8 unjustified repetition;

9 “(D) to comply with a lawful order
10 issued—

11 “(i) in a delinquency proceeding com-
12 menced by the State insurance commis-
13 sioner if there has been a finding of finan-
14 cial impairment under subparagraph (C);
15 or

16 “(ii) in a voluntary dissolution pro-
17 ceeding;

18 “(E) to comply with an injunction issued
19 by a court of competent jurisdiction, upon a pe-
20 tition by the State insurance commissioner al-
21 leging that the issuer is in hazardous financial
22 condition;

23 “(F) to participate, on a nondiscriminatory
24 basis, in any insurance insolvency guaranty as-
25 sociation or similar association to which a

1 health insurance issuer in the State is required
2 to belong;

3 “(G) to comply with any State law regard-
4 ing fraud and abuse (as defined in section
5 2795(10)), except that if the State seeks an in-
6 junction regarding the conduct described in this
7 subparagraph, such injunction must be obtained
8 from a court of competent jurisdiction;

9 “(H) to comply with any State law regard-
10 ing unfair claims settlement practices (as de-
11 fined in section 2795(9)); or

12 “(I) to comply with the applicable require-
13 ments for independent review under section
14 2798 with respect to coverage offered in the
15 State;

16 “(2) require any individual health insurance
17 coverage issued by the issuer to be countersigned by
18 an insurance agent or broker residing in that Sec-
19 ondary State; or

20 “(3) otherwise discriminate against the issuer
21 issuing insurance in both the primary State and in
22 any secondary State.

23 “(c) CLEAR AND CONSPICUOUS DISCLOSURE.—A
24 health insurance issuer shall provide the following notice,
25 in 12-point bold type, in any insurance coverage offered

1 in a secondary State under this part by such a health in-
2 surance issuer and at renewal of the policy, with the 5
3 blank spaces therein being appropriately filled with the
4 name of the health insurance issuer, the name of primary
5 State, the name of the secondary State, the name of the
6 secondary State, and the name of the secondary State, re-
7 spectively, for the coverage concerned:

8 “**Notice**

9 “**This policy is issued by _____ and is**
10 **governed by the laws and regulations of the**
11 **State of _____, and it has met all the laws**
12 **of that State as determined by that State’s De-**
13 **partment of Insurance. This policy may be**
14 **less expensive than others because it is not**
15 **subject to all of the insurance laws and regu-**
16 **lations of the State of _____, including**
17 **coverage of some services or benefits man-**
18 **dated by the law of the State of _____. Ad-**
19 **ditionally, this policy is not subject to all of**
20 **the consumer protection laws or restrictions**
21 **on rate changes of the State of _____. As**
22 **with all insurance products, before pur-**
23 **chasing this policy, you should carefully re-**
24 **view the policy and determine what health**
25 **care services the policy covers and what bene-**

1 **fits it provides, including any exclusions, limi-**
2 **tations, or conditions for such services or ben-**
3 **efits.’.**

4 “(d) PROHIBITION ON CERTAIN RECLASSIFICATIONS
5 AND PREMIUM INCREASES.—

6 “(1) IN GENERAL.—For purposes of this sec-
7 tion, a health insurance issuer that provides indi-
8 vidual health insurance coverage to an individual
9 under this part in a primary or secondary State may
10 not upon renewal—

11 “(A) move or reclassify the individual in-
12 sured under the health insurance coverage from
13 the class such individual is in at the time of
14 issue of the contract based on the health-status
15 related factors of the individual; or

16 “(B) increase the premiums assessed the
17 individual for such coverage based on a health
18 status-related factor or change of a health sta-
19 tus-related factor or the past or prospective
20 claim experience of the insured individual.

21 “(2) CONSTRUCTION.—Nothing in paragraph
22 (1) shall be construed to prohibit a health insurance
23 issuer—

1 “(A) from terminating or discontinuing
2 coverage or a class of coverage in accordance
3 with subsections (b) and (c) of section 2742;

4 “(B) from raising premium rates for all
5 policy holders within a class based on claims ex-
6 perience;

7 “(C) from changing premiums or offering
8 discounted premiums to individuals who engage
9 in wellness activities at intervals prescribed by
10 the issuer, if such premium changes or incen-
11 tives—

12 “(i) are disclosed to the consumer in
13 the insurance contract;

14 “(ii) are based on specific wellness ac-
15 tivities that are not applicable to all indi-
16 viduals; and

17 “(iii) are not obtainable by all individ-
18 uals to whom coverage is offered;

19 “(D) from reinstating lapsed coverage; or

20 “(E) from retroactively adjusting the rates
21 charged an insured individual if the initial rates
22 were set based on material misrepresentation by
23 the individual at the time of issue.

24 “(e) PRIOR OFFERING OF POLICY IN PRIMARY
25 STATE.—A health insurance issuer may not offer for sale

1 individual health insurance coverage in a secondary State
2 unless that coverage is currently offered for sale in the
3 primary State.

4 “(f) LICENSING OF AGENTS OR BROKERS FOR
5 HEALTH INSURANCE ISSUERS.—Any State may require
6 that a person acting, or offering to act, as an agent or
7 broker for a health insurance issuer with respect to the
8 offering of individual health insurance coverage obtain a
9 license from that State, with commissions or other com-
10 pensation subject to the provisions of the laws of that
11 State, except that a State may not impose any qualifica-
12 tion or requirement which discriminates against a non-
13 resident agent or broker.

14 “(g) DOCUMENTS FOR SUBMISSION TO STATE IN-
15 SURANCE COMMISSIONER.—Each health insurance issuer
16 issuing individual health insurance coverage in both pri-
17 mary and secondary States shall submit—

18 “(1) to the insurance commissioner of each
19 State in which it intends to offer such coverage, be-
20 fore it may offer individual health insurance cov-
21 erage in such State—

22 “(A) a copy of the plan of operation or fea-
23 sibility study or any similar statement of the
24 policy being offered and its coverage (which

1 shall include the name of its primary State and
2 its principal place of business);

3 “(B) written notice of any change in its
4 designation of its primary State; and

5 “(C) written notice from the issuer of the
6 issuer’s compliance with all the laws of the pri-
7 mary State; and

8 “(2) to the insurance commissioner of each sec-
9 ondary State in which it offers individual health in-
10 surance coverage, a copy of the issuer’s quarterly fi-
11 nancial statement submitted to the primary State,
12 which statement shall be certified by an independent
13 public accountant and contain a statement of opin-
14 ion on loss and loss adjustment expense reserves
15 made by—

16 “(A) a member of the American Academy
17 of Actuaries; or

18 “(B) a qualified loss reserve specialist.

19 “(h) POWER OF COURTS TO ENJOIN CONDUCT.—
20 Nothing in this section shall be construed to affect the
21 authority of any Federal or State court to enjoin—

22 “(1) the solicitation or sale of individual health
23 insurance coverage by a health insurance issuer to
24 any person or group who is not eligible for such in-
25 surance; or

1 “(2) the solicitation or sale of individual health
2 insurance coverage that violates the requirements of
3 the law of a secondary State which are described in
4 subparagraphs (A) through (H) of section
5 2796(b)(1).

6 “(i) POWER OF SECONDARY STATES TO TAKE AD-
7 MINISTRATIVE ACTION.—Nothing in this section shall be
8 construed to affect the authority of any State to enjoin
9 conduct in violation of that State’s laws described in sec-
10 tion 2796(b)(1).

11 “(j) STATE POWERS TO ENFORCE STATE LAWS.—

12 “(1) IN GENERAL.—Subject to the provisions of
13 subsection (b)(1)(G) (relating to injunctions) and
14 paragraph (2), nothing in this section shall be con-
15 strued to affect the authority of any State to make
16 use of any of its powers to enforce the laws of such
17 State with respect to which a health insurance issuer
18 is not exempt under subsection (b).

19 “(2) COURTS OF COMPETENT JURISDICTION.—

20 If a State seeks an injunction regarding the conduct
21 described in paragraphs (1) and (2) of subsection
22 (h), such injunction must be obtained from a Fed-
23 eral or State court of competent jurisdiction.

1 “(k) STATES’ AUTHORITY TO SUE.—Nothing in this
2 section shall affect the authority of any State to bring ac-
3 tion in any Federal or State court.

4 “(l) GENERALLY APPLICABLE LAWS.—Nothing in
5 this section shall be construed to affect the applicability
6 of State laws generally applicable to persons or corpora-
7 tions.

8 “(m) GUARANTEED AVAILABILITY OF COVERAGE TO
9 HIPAA ELIGIBLE INDIVIDUALS.—To the extent that a
10 health insurance issuer is offering coverage in a primary
11 State that does not accommodate residents of secondary
12 States or does not provide a working mechanism for resi-
13 dents of a secondary State, and the issuer is offering cov-
14 erage under this part in such secondary State which has
15 not adopted a qualified high risk pool as its acceptable
16 alternative mechanism (as defined in section 2744(c)(2)),
17 the issuer shall, with respect to any individual health in-
18 surance coverage offered in a secondary State under this
19 part, comply with the guaranteed availability requirements
20 for eligible individuals in section 2741.

21 **“SEC. 2797. PRIMARY STATE MUST MEET FEDERAL FLOOR**
22 **BEFORE ISSUER MAY SELL INTO SECONDARY**
23 **STATES.**

24 “A health insurance issuer may not offer, sell, or
25 issue individual health insurance coverage in a secondary

1 State if the State insurance commissioner does not use
2 a risk-based capital formula for the determination of cap-
3 ital and surplus requirements for all health insurance
4 issuers.

5 **“SEC. 2798. INDEPENDENT EXTERNAL APPEALS PROCE-**
6 **DURES.**

7 “(a) RIGHT TO EXTERNAL APPEAL.—A health insur-
8 ance issuer may not offer, sell, or issue individual health
9 insurance coverage in a secondary State under the provi-
10 sions of this title unless—

11 “(1) both the secondary State and the primary
12 State have legislation or regulations in place estab-
13 lishing an independent review process for individuals
14 who are covered by individual health insurance cov-
15 erage, or

16 “(2) in any case in which the requirements of
17 subparagraph (A) are not met with respect to the ei-
18 ther of such States, the issuer provides an inde-
19 pendent review mechanism substantially identical (as
20 determined by the applicable State authority of such
21 State) to that prescribed in the ‘Health Carrier Ex-
22 ternal Review Model Act’ of the National Association
23 of Insurance Commissioners for all individuals who
24 purchase insurance coverage under the terms of this
25 part; except that, under such mechanism, the review

1 is conducted by an independent medical reviewer, or
2 a panel of such reviewers, with respect to whom the
3 requirements of subsection (b) are met.

4 “(b) QUALIFICATIONS OF INDEPENDENT MEDICAL
5 REVIEWERS.—In the case of any independent review
6 mechanism referred to in subsection (a)(2)—

7 “(1) IN GENERAL.—In referring a denial of a
8 claim to an independent medical reviewer, or to any
9 panel of such reviewers, to conduct independent
10 medical review, the issuer shall ensure that—

11 “(A) each independent medical reviewer
12 meets the qualifications described in paragraphs
13 (2) and (3);

14 “(B) with respect to each review, each re-
15 viewer meets the requirements of paragraph (4)
16 and the reviewer, or at least 1 reviewer on the
17 panel, meets the requirements described in
18 paragraph (5); and

19 “(C) compensation provided by the issuer
20 to each reviewer is consistent with paragraph
21 (6).

22 “(2) LICENSURE AND EXPERTISE.—Each inde-
23 pendent medical reviewer shall be a physician
24 (allopathic or osteopathic) or health care profes-
25 sional who—

1 “(A) is appropriately credentialed or li-
2 censed in 1 or more States to deliver health
3 care services; and

4 “(B) typically treats the condition, makes
5 the diagnosis, or provides the type of treatment
6 under review.

7 “(3) INDEPENDENCE.—

8 “(A) IN GENERAL.—Subject to subpara-
9 graph (B), each independent medical reviewer
10 in a case shall—

11 “(i) not be a related party (as defined
12 in paragraph (7));

13 “(ii) not have a material familial, fi-
14 nancial, or professional relationship with
15 such a party; and

16 “(iii) not otherwise have a conflict of
17 interest with such a party (as determined
18 under regulations).

19 “(B) EXCEPTION.—Nothing in subpara-
20 graph (A) shall be construed to—

21 “(i) prohibit an individual, solely on
22 the basis of affiliation with the issuer,
23 from serving as an independent medical re-
24 viewer if—

1 “(I) a non-affiliated individual is
2 not reasonably available;

3 “(II) the affiliated individual is
4 not involved in the provision of items
5 or services in the case under review;

6 “(III) the fact of such an affili-
7 ation is disclosed to the issuer and the
8 enrollee (or authorized representative)
9 and neither party objects; and

10 “(IV) the affiliated individual is
11 not an employee of the issuer and
12 does not provide services exclusively or
13 primarily to or on behalf of the issuer;

14 “(ii) prohibit an individual who has
15 staff privileges at the institution where the
16 treatment involved takes place from serv-
17 ing as an independent medical reviewer
18 merely on the basis of such affiliation if
19 the affiliation is disclosed to the issuer and
20 the enrollee (or authorized representative),
21 and neither party objects; or

22 “(iii) prohibit receipt of compensation
23 by an independent medical reviewer from
24 an entity if the compensation is provided
25 consistent with paragraph (6).

1 “(4) PRACTICING HEALTH CARE PROFESSIONAL
2 IN SAME FIELD.—

3 “(A) IN GENERAL.—In a case involving
4 treatment, or the provision of items or serv-
5 ices—

6 “(i) by a physician, a reviewer shall be
7 a practicing physician (allopathic or osteo-
8 pathic) of the same or similar specialty, as
9 a physician who, acting within the appro-
10 priate scope of practice within the State in
11 which the service is provided or rendered,
12 typically treats the condition, makes the
13 diagnosis, or provides the type of treat-
14 ment under review; or

15 “(ii) by a non-physician health care
16 professional, the reviewer, or at least 1
17 member of the review panel, shall be a
18 practicing non-physician health care pro-
19 fessional of the same or similar specialty
20 as the non-physician health care profes-
21 sional who, acting within the appropriate
22 scope of practice within the State in which
23 the service is provided or rendered, typi-
24 cally treats the condition, makes the diag-

1 nosis, or provides the type of treatment
2 under review.

3 “(B) PRACTICING DEFINED.—For pur-
4 poses of this paragraph, the term ‘practicing’
5 means, with respect to an individual who is a
6 physician or other health care professional, that
7 the individual provides health care services to
8 individual patients on average at least 2 days
9 per week.

10 “(5) PEDIATRIC EXPERTISE.—In the case of an
11 external review relating to a child, a reviewer shall
12 have expertise under paragraph (2) in pediatrics.

13 “(6) LIMITATIONS ON REVIEWER COMPENSA-
14 TION.—Compensation provided by the issuer to an
15 independent medical reviewer in connection with a
16 review under this section shall—

17 “(A) not exceed a reasonable level; and

18 “(B) not be contingent on the decision ren-
19 dered by the reviewer.

20 “(7) RELATED PARTY DEFINED.—For purposes
21 of this section, the term ‘related party’ means, with
22 respect to a denial of a claim under a coverage relat-
23 ing to an enrollee, any of the following:

24 “(A) The issuer involved, or any fiduciary,
25 officer, director, or employee of the issuer.

1 “(B) The enrollee (or authorized represent-
2 ative).

3 “(C) The health care professional that pro-
4 vides the items or services involved in the de-
5 nial.

6 “(D) The institution at which the items or
7 services (or treatment) involved in the denial
8 are provided.

9 “(E) The manufacturer of any drug or
10 other item that is included in the items or serv-
11 ices involved in the denial.

12 “(F) Any other party determined under
13 any regulations to have a substantial interest in
14 the denial involved.

15 “(8) DEFINITIONS.—For purposes of this sub-
16 section:

17 “(A) ENROLLEE.—The term ‘enrollee’
18 means, with respect to health insurance cov-
19 erage offered by a health insurance issuer, an
20 individual enrolled with the issuer to receive
21 such coverage.

22 “(B) HEALTH CARE PROFESSIONAL.—The
23 term ‘health care professional’ means an indi-
24 vidual who is licensed, accredited, or certified
25 under State law to provide specified health care

1 services and who is operating within the scope
2 of such licensure, accreditation, or certification.

3 **“SEC. 2799. ENFORCEMENT.**

4 “(a) IN GENERAL.—Subject to subsection (b), with
5 respect to specific individual health insurance coverage the
6 primary State for such coverage has sole jurisdiction to
7 enforce the primary State’s covered laws in the primary
8 State and any secondary State.

9 “(b) SECONDARY STATE’S AUTHORITY.—Nothing in
10 subsection (a) shall be construed to affect the authority
11 of a secondary State to enforce its laws as set forth in
12 the exception specified in section 2796(b)(1).

13 “(c) COURT INTERPRETATION.—In reviewing action
14 initiated by the applicable secondary State authority, the
15 court of competent jurisdiction shall apply the covered
16 laws of the primary State.

17 “(d) NOTICE OF COMPLIANCE FAILURE.—In the case
18 of individual health insurance coverage offered in a sec-
19 ondary State that fails to comply with the covered laws
20 of the primary State, the applicable State authority of the
21 secondary State may notify the applicable State authority
22 of the primary State.”.

23 (b) EFFECTIVE DATE.—The amendment made by
24 subsection (a) shall apply to individual health insurance

1 coverage offered, issued, or sold after the date that is one
2 year after the date of the enactment of this Act.

3 (c) GAO ONGOING STUDY AND REPORTS.—

4 (1) STUDY.—The Comptroller General of the
5 United States shall conduct an ongoing study con-
6 cerning the effect of the amendment made by sub-
7 section (a) on—

8 (A) the number of uninsured and under-in-
9 sured;

10 (B) the availability and cost of health in-
11 surance policies for individuals with pre-existing
12 medical conditions;

13 (C) the availability and cost of health in-
14 surance policies generally;

15 (D) the elimination or reduction of dif-
16 ferent types of benefits under health insurance
17 policies offered in different States; and

18 (E) cases of fraud or abuse relating to
19 health insurance coverage offered under such
20 amendment and the resolution of such cases.

21 (2) ANNUAL REPORTS.—The Comptroller Gen-
22 eral shall submit to Congress an annual report, after
23 the end of each of the 5 years following the effective
24 date of the amendment made by subsection (a), on
25 the ongoing study conducted under paragraph (1).

1 (d) SEVERABILITY.—If any provision of this title or
 2 the application of such provision to any person or cir-
 3 cumstance is held to be unconstitutional, the remainder
 4 of this title and the application of the provisions of such
 5 to any other person or circumstance shall not be affected.

6 **SEC. 112. SMALL BUSINESS HEALTH FAIRNESS.**

7 (a) RULES GOVERNING ASSOCIATION HEALTH
 8 PLANS.—

9 (1) IN GENERAL.—Subtitle B of title I of the
 10 Employee Retirement Income Security Act of 1974
 11 is amended by adding after part 7 the following new
 12 part:

13 **“PART 8—RULES GOVERNING ASSOCIATION**
 14 **HEALTH PLANS**

15 **“SEC. 801. ASSOCIATION HEALTH PLANS.**

16 “(a) IN GENERAL.—For purposes of this part, the
 17 term ‘association health plan’ means a group health plan
 18 whose sponsor is (or is deemed under this part to be) de-
 19 scribed in subsection (b).

20 “(b) SPONSORSHIP.—The sponsor of a group health
 21 plan is described in this subsection if such sponsor—

22 “(1) is organized and maintained in good faith,
 23 with a constitution and bylaws specifically stating its
 24 purpose and providing for periodic meetings on at
 25 least an annual basis, as a bona fide trade associa-

tion, a bona fide industry association (including a rural electric cooperative association or a rural telephone cooperative association), a bona fide professional association, or a bona fide chamber of commerce (or similar bona fide business association, including a corporation or similar organization that operates on a cooperative basis (within the meaning of section 1381 of the Internal Revenue Code of 1986)), for substantial purposes other than that of obtaining or providing medical care;

“(2) is established as a permanent entity which receives the active support of its members and requires for membership payment on a periodic basis of dues or payments necessary to maintain eligibility for membership in the sponsor; and

“(3) does not condition membership, such dues or payments, or coverage under the plan on the basis of health status-related factors with respect to the employees of its members (or affiliated members), or the dependents of such employees, and does not condition such dues or payments on the basis of group health plan participation.

Any sponsor consisting of an association of entities which meet the requirements of paragraphs (1), (2), and (3)

1 shall be deemed to be a sponsor described in this sub-
2 section.

3 **“SEC. 802. CERTIFICATION OF ASSOCIATION HEALTH**
4 **PLANS.**

5 “(a) IN GENERAL.—The applicable authority shall
6 prescribe by regulation a procedure under which, subject
7 to subsection (b), the applicable authority shall certify as-
8 sociation health plans which apply for certification as
9 meeting the requirements of this part.

10 “(b) STANDARDS.—Under the procedure prescribed
11 pursuant to subsection (a), in the case of an association
12 health plan that provides at least one benefit option which
13 does not consist of health insurance coverage, the applica-
14 ble authority shall certify such plan as meeting the re-
15 quirements of this part only if the applicable authority is
16 satisfied that the applicable requirements of this part are
17 met (or, upon the date on which the plan is to commence
18 operations, will be met) with respect to the plan.

19 “(c) REQUIREMENTS APPLICABLE TO CERTIFIED
20 PLANS.—An association health plan with respect to which
21 certification under this part is in effect shall meet the ap-
22 plicable requirements of this part, effective on the date
23 of certification (or, if later, on the date on which the plan
24 is to commence operations).

1 “(d) REQUIREMENTS FOR CONTINUED CERTIFI-
2 CATION.—The applicable authority may provide by regula-
3 tion for continued certification of association health plans
4 under this part.

5 “(e) CLASS CERTIFICATION FOR FULLY INSURED
6 PLANS.—The applicable authority shall establish a class
7 certification procedure for association health plans under
8 which all benefits consist of health insurance coverage.
9 Under such procedure, the applicable authority shall pro-
10 vide for the granting of certification under this part to
11 the plans in each class of such association health plans
12 upon appropriate filing under such procedure in connec-
13 tion with plans in such class and payment of the pre-
14 scribed fee under section 807(a).

15 “(f) CERTIFICATION OF SELF-INSURED ASSOCIATION
16 HEALTH PLANS.—An association health plan which offers
17 one or more benefit options which do not consist of health
18 insurance coverage may be certified under this part only
19 if such plan consists of any of the following:

20 “(1) a plan which offered such coverage on the
21 date of the enactment of this part,

22 “(2) a plan under which the sponsor does not
23 restrict membership to one or more trades and busi-
24 nesses or industries and whose eligible participating

1 employers represent a broad cross-section of trades
2 and businesses or industries, or
3 “(3) a plan whose eligible participating employ-
4 ers represent one or more trades or businesses, or
5 one or more industries, consisting of any of the fol-
6 lowing: agriculture; equipment and automobile deal-
7 erships; barbering and cosmetology; certified public
8 accounting practices; child care; construction; dance,
9 theatrical and orchestra productions; disinfecting
10 and pest control; financial services; fishing; food
11 service establishments; hospitals; labor organiza-
12 tions; logging; manufacturing (metals); mining; med-
13 ical and dental practices; medical laboratories; pro-
14 fessional consulting services; sanitary services; trans-
15 portation (local and freight); warehousing; whole-
16 saling/distributing; or any other trade or business or
17 industry which has been indicated as having average
18 or above-average risk or health claims experience by
19 reason of State rate filings, denials of coverage, pro-
20 posed premium rate levels, or other means dem-
21 onstrated by such plan in accordance with regula-
22 tions.

1 **“SEC. 803. REQUIREMENTS RELATING TO SPONSORS AND**
2 **BOARDS OF TRUSTEES.**

3 “(a) SPONSOR.—The requirements of this subsection
4 are met with respect to an association health plan if the
5 sponsor has met (or is deemed under this part to have
6 met) the requirements of section 801(b) for a continuous
7 period of not less than 3 years ending with the date of
8 the application for certification under this part.

9 “(b) BOARD OF TRUSTEES.—The requirements of
10 this subsection are met with respect to an association
11 health plan if the following requirements are met:

12 “(1) FISCAL CONTROL.—The plan is operated,
13 pursuant to a trust agreement, by a board of trust-
14 ees which has complete fiscal control over the plan
15 and which is responsible for all operations of the
16 plan.

17 “(2) RULES OF OPERATION AND FINANCIAL
18 CONTROLS.—The board of trustees has in effect
19 rules of operation and financial controls, based on a
20 3-year plan of operation, adequate to carry out the
21 terms of the plan and to meet all requirements of
22 this title applicable to the plan.

23 “(3) RULES GOVERNING RELATIONSHIP TO
24 PARTICIPATING EMPLOYERS AND TO CONTRAC-
25 TORS.—

26 “(A) BOARD MEMBERSHIP.—

1 “(i) IN GENERAL.—Except as pro-
2 vided in clauses (ii) and (iii), the members
3 of the board of trustees are individuals se-
4 lected from individuals who are the owners,
5 officers, directors, or employees of the par-
6 ticipating employers or who are partners in
7 the participating employers and actively
8 participate in the business.

9 “(ii) LIMITATION.—

10 “(I) GENERAL RULE.—Except as
11 provided in subclauses (II) and (III),
12 no such member is an owner, officer,
13 director, or employee of, or partner in,
14 a contract administrator or other
15 service provider to the plan.

16 “(II) LIMITED EXCEPTION FOR
17 PROVIDERS OF SERVICES SOLELY ON
18 BEHALF OF THE SPONSOR.—Officers
19 or employees of a sponsor which is a
20 service provider (other than a contract
21 administrator) to the plan may be
22 members of the board if they con-
23 stitute not more than 25 percent of
24 the membership of the board and they

1 do not provide services to the plan
2 other than on behalf of the sponsor.

3 “(III) TREATMENT OF PRO-
4 VIDERS OF MEDICAL CARE.—In the
5 case of a sponsor which is an associa-
6 tion whose membership consists pri-
7 marily of providers of medical care,
8 subclause (I) shall not apply in the
9 case of any service provider described
10 in subclause (I) who is a provider of
11 medical care under the plan.

12 “(iii) CERTAIN PLANS EXCLUDED.—
13 Clause (i) shall not apply to an association
14 health plan which is in existence on the
15 date of the enactment of this part.

16 “(B) SOLE AUTHORITY.—The board has
17 sole authority under the plan to approve appli-
18 cations for participation in the plan and to con-
19 tract with a service provider to administer the
20 day-to-day affairs of the plan.

21 “(c) TREATMENT OF FRANCHISE NETWORKS.—In
22 the case of a group health plan which is established and
23 maintained by a franchiser for a franchise network con-
24 sisting of its franchisees—

1 “(1) the requirements of subsection (a) and sec-
 2 tion 801(a) shall be deemed met if such require-
 3 ments would otherwise be met if the franchiser were
 4 deemed to be the sponsor referred to in section
 5 801(b), such network were deemed to be an associa-
 6 tion described in section 801(b), and each franchisee
 7 were deemed to be a member (of the association and
 8 the sponsor) referred to in section 801(b); and

9 “(2) the requirements of section 804(a)(1) shall
 10 be deemed met.

11 The Secretary may by regulation define for purposes of
 12 this subsection the terms ‘franchiser’, ‘franchise network’,
 13 and ‘franchisee’.

14 **“SEC. 804. PARTICIPATION AND COVERAGE REQUIRE-**
 15 **MENTS.**

16 “(a) COVERED EMPLOYERS AND INDIVIDUALS.—The
 17 requirements of this subsection are met with respect to
 18 an association health plan if, under the terms of the
 19 plan—

20 “(1) each participating employer must be—

21 “(A) a member of the sponsor,

22 “(B) the sponsor, or

23 “(C) an affiliated member of the sponsor
 24 with respect to which the requirements of sub-
 25 section (b) are met,

except that, in the case of a sponsor which is a professional association or other individual-based association, if at least one of the officers, directors, or employees of an employer, or at least one of the individuals who are partners in an employer and who actively participates in the business, is a member or such an affiliated member of the sponsor, participating employers may also include such employer; and

“(2) all individuals commencing coverage under the plan after certification under this part must be—

“(A) active or retired owners (including self-employed individuals), officers, directors, or employees of, or partners in, participating employers; or

“(B) the beneficiaries of individuals described in subparagraph (A).

“(b) COVERAGE OF PREVIOUSLY UNINSURED EMPLOYEES.—In the case of an association health plan in existence on the date of the enactment of this part, an affiliated member of the sponsor of the plan may be offered coverage under the plan as a participating employer only if—

1 “(1) the affiliated member was an affiliated
2 member on the date of certification under this part;
3 or

4 “(2) during the 12-month period preceding the
5 date of the offering of such coverage, the affiliated
6 member has not maintained or contributed to a
7 group health plan with respect to any of its employ-
8 ees who would otherwise be eligible to participate in
9 such association health plan.

10 “(c) INDIVIDUAL MARKET UNAFFECTED.—The re-
11 quirements of this subsection are met with respect to an
12 association health plan if, under the terms of the plan,
13 no participating employer may provide health insurance
14 coverage in the individual market for any employee not
15 covered under the plan which is similar to the coverage
16 contemporaneously provided to employees of the employer
17 under the plan, if such exclusion of the employee from cov-
18 erage under the plan is based on a health status-related
19 factor with respect to the employee and such employee
20 would, but for such exclusion on such basis, be eligible
21 for coverage under the plan.

22 “(d) PROHIBITION OF DISCRIMINATION AGAINST
23 EMPLOYERS AND EMPLOYEES ELIGIBLE TO PARTICI-
24 PATE.—The requirements of this subsection are met with
25 respect to an association health plan if—

“(1) under the terms of the plan, all employers meeting the preceding requirements of this section are eligible to qualify as participating employers for all geographically available coverage options, unless, in the case of any such employer, participation or contribution requirements of the type referred to in section 2711 of the Public Health Service Act are not met;

“(2) upon request, any employer eligible to participate is furnished information regarding all coverage options available under the plan; and

“(3) the applicable requirements of sections 701, 702, and 703 are met with respect to the plan.

“SEC. 805. OTHER REQUIREMENTS RELATING TO PLAN DOCUMENTS, CONTRIBUTION RATES, AND BENEFIT OPTIONS.

“(a) IN GENERAL.—The requirements of this section are met with respect to an association health plan if the following requirements are met:

“(1) CONTENTS OF GOVERNING INSTRUMENTS.—The instruments governing the plan include a written instrument, meeting the requirements of an instrument required under section 402(a)(1), which—

1 “(A) provides that the board of trustees
2 serves as the named fiduciary required for plans
3 under section 402(a)(1) and serves in the ca-
4 pacity of a plan administrator (referred to in
5 section 3(16)(A));

6 “(B) provides that the sponsor of the plan
7 is to serve as plan sponsor (referred to in sec-
8 tion 3(16)(B)); and

9 “(C) incorporates the requirements of sec-
10 tion 806.

11 “(2) CONTRIBUTION RATES MUST BE NON-
12 DISCRIMINATORY.—

13 “(A) The contribution rates for any par-
14 ticipating small employer do not vary on the
15 basis of any health status-related factor in rela-
16 tion to employees of such employer or their
17 beneficiaries and do not vary on the basis of the
18 type of business or industry in which such em-
19 ployer is engaged.

20 “(B) Nothing in this title or any other pro-
21 vision of law shall be construed to preclude an
22 association health plan, or a health insurance
23 issuer offering health insurance coverage in
24 connection with an association health plan,
25 from—

1 “(i) setting contribution rates based
2 on the claims experience of the plan; or

3 “(ii) varying contribution rates for
4 small employers in a State to the extent
5 that such rates could vary using the same
6 methodology employed in such State for
7 regulating premium rates in the small
8 group market with respect to health insur-
9 ance coverage offered in connection with
10 bona fide associations (within the meaning
11 of section 2791(d)(3) of the Public Health
12 Service Act),

13 subject to the requirements of section 702(b)
14 relating to contribution rates.

15 “(3) FLOOR FOR NUMBER OF COVERED INDIVIDUALS WITH RESPECT TO CERTAIN PLANS.—If
16 any benefit option under the plan does not consist
17 of health insurance coverage, the plan has as of the
18 beginning of the plan year not fewer than 1,000 par-
19 ticipants and beneficiaries.
20

21 “(4) MARKETING REQUIREMENTS.—

22 “(A) IN GENERAL.—If a benefit option
23 which consists of health insurance coverage is
24 offered under the plan, State-licensed insurance
25 agents shall be used to distribute to small em-

1 ployers coverage which does not consist of
 2 health insurance coverage in a manner com-
 3 parable to the manner in which such agents are
 4 used to distribute health insurance coverage.

5 “(B) STATE-LICENSED INSURANCE
 6 AGENTS.—For purposes of subparagraph (A),
 7 the term ‘State-licensed insurance agents’
 8 means one or more agents who are licensed in
 9 a State and are subject to the laws of such
 10 State relating to licensure, qualification, test-
 11 ing, examination, and continuing education of
 12 persons authorized to offer, sell, or solicit
 13 health insurance coverage in such State.

14 “(5) REGULATORY REQUIREMENTS.—Such
 15 other requirements as the applicable authority deter-
 16 mines are necessary to carry out the purposes of this
 17 part, which shall be prescribed by the applicable au-
 18 thority by regulation.

19 “(b) ABILITY OF ASSOCIATION HEALTH PLANS TO
 20 DESIGN BENEFIT OPTIONS.—Subject to section 514(d),
 21 nothing in this part or any provision of State law (as de-
 22 fined in section 514(c)(1)) shall be construed to preclude
 23 an association health plan, or a health insurance issuer
 24 offering health insurance coverage in connection with an
 25 association health plan, from exercising its sole discretion

1 in selecting the specific items and services consisting of
2 medical care to be included as benefits under such plan
3 or coverage, except (subject to section 514) in the case
4 of (1) any law to the extent that it is not preempted under
5 section 731(a)(1) with respect to matters governed by sec-
6 tion 711, 712, or 713, or (2) any law of the State with
7 which filing and approval of a policy type offered by the
8 plan was initially obtained to the extent that such law pro-
9 hibits an exclusion of a specific disease from such cov-
10 erage.

11 **“SEC. 806. MAINTENANCE OF RESERVES AND PROVISIONS**
12 **FOR SOLVENCY FOR PLANS PROVIDING**
13 **HEALTH BENEFITS IN ADDITION TO HEALTH**
14 **INSURANCE COVERAGE.**

15 “(a) IN GENERAL.—The requirements of this section
16 are met with respect to an association health plan if—

17 “(1) the benefits under the plan consist solely
18 of health insurance coverage; or

19 “(2) if the plan provides any additional benefit
20 options which do not consist of health insurance cov-
21 erage, the plan—

22 “(A) establishes and maintains reserves
23 with respect to such additional benefit options,
24 in amounts recommended by the qualified actu-
25 ary, consisting of—

1 “(i) a reserve sufficient for unearned
2 contributions;

3 “(ii) a reserve sufficient for benefit li-
4 abilities which have been incurred, which
5 have not been satisfied, and for which risk
6 of loss has not yet been transferred, and
7 for expected administrative costs with re-
8 spect to such benefit liabilities;

9 “(iii) a reserve sufficient for any other
10 obligations of the plan; and

11 “(iv) a reserve sufficient for a margin
12 of error and other fluctuations, taking into
13 account the specific circumstances of the
14 plan; and

15 “(B) establishes and maintains aggregate
16 and specific excess/stop loss insurance and sol-
17 vency indemnification, with respect to such ad-
18 ditional benefit options for which risk of loss
19 has not yet been transferred, as follows:

20 “(i) The plan shall secure aggregate
21 excess/stop loss insurance for the plan with
22 an attachment point which is not greater
23 than 125 percent of expected gross annual
24 claims. The applicable authority may by
25 regulation provide for upward adjustments

1 in the amount of such percentage in speci-
2 fied circumstances in which the plan spe-
3 cifically provides for and maintains re-
4 serves in excess of the amounts required
5 under subparagraph (A).

6 “(ii) The plan shall secure specific ex-
7 cess/stop loss insurance for the plan with
8 an attachment point which is at least equal
9 to an amount recommended by the plan’s
10 qualified actuary. The applicable authority
11 may by regulation provide for adjustments
12 in the amount of such insurance in speci-
13 fied circumstances in which the plan spe-
14 cifically provides for and maintains re-
15 serves in excess of the amounts required
16 under subparagraph (A).

17 “(iii) The plan shall secure indem-
18 nification insurance for any claims which
19 the plan is unable to satisfy by reason of
20 a plan termination.

21 Any person issuing to a plan insurance described in clause
22 (i), (ii), or (iii) of subparagraph (B) shall notify the Sec-
23 retary of any failure of premium payment meriting can-
24 cellation of the policy prior to undertaking such a cancella-
25 tion. Any regulations prescribed by the applicable author-

1 ity pursuant to clause (i) or (ii) of subparagraph (B) may
2 allow for such adjustments in the required levels of excess/
3 stop loss insurance as the qualified actuary may rec-
4 ommend, taking into account the specific circumstances
5 of the plan.

6 “(b) MINIMUM SURPLUS IN ADDITION TO CLAIMS
7 RESERVES.—In the case of any association health plan de-
8 scribed in subsection (a)(2), the requirements of this sub-
9 section are met if the plan establishes and maintains sur-
10 plus in an amount at least equal to—

11 “(1) \$500,000, or

12 “(2) such greater amount (but not greater than
13 \$2,000,000) as may be set forth in regulations pre-
14 scribed by the applicable authority, considering the
15 level of aggregate and specific excess/stop loss insur-
16 ance provided with respect to such plan and other
17 factors related to solvency risk, such as the plan’s
18 projected levels of participation or claims, the nature
19 of the plan’s liabilities, and the types of assets avail-
20 able to assure that such liabilities are met.

21 “(c) ADDITIONAL REQUIREMENTS.—In the case of
22 any association health plan described in subsection (a)(2),
23 the applicable authority may provide such additional re-
24 quirements relating to reserves, excess/stop loss insurance,
25 and indemnification insurance as the applicable authority

1 considers appropriate. Such requirements may be provided
2 by regulation with respect to any such plan or any class
3 of such plans.

4 “(d) ADJUSTMENTS FOR EXCESS/STOP LOSS INSUR-
5 ANCE.—The applicable authority may provide for adjust-
6 ments to the levels of reserves otherwise required under
7 subsections (a) and (b) with respect to any plan or class
8 of plans to take into account excess/stop loss insurance
9 provided with respect to such plan or plans.

10 “(e) ALTERNATIVE MEANS OF COMPLIANCE.—The
11 applicable authority may permit an association health plan
12 described in subsection (a)(2) to substitute, for all or part
13 of the requirements of this section (except subsection
14 (a)(2)(B)(iii)), such security, guarantee, hold-harmless ar-
15 rangement, or other financial arrangement as the applica-
16 ble authority determines to be adequate to enable the plan
17 to fully meet all its financial obligations on a timely basis
18 and is otherwise no less protective of the interests of par-
19 ticipants and beneficiaries than the requirements for
20 which it is substituted. The applicable authority may take
21 into account, for purposes of this subsection, evidence pro-
22 vided by the plan or sponsor which demonstrates an as-
23 sumption of liability with respect to the plan. Such evi-
24 dence may be in the form of a contract of indemnification,
25 lien, bonding, insurance, letter of credit, recourse under

1 applicable terms of the plan in the form of assessments
2 of participating employers, security, or other financial ar-
3 rangement.

4 “(f) MEASURES TO ENSURE CONTINUED PAYMENT
5 OF BENEFITS BY CERTAIN PLANS IN DISTRESS.—

6 “(1) PAYMENTS BY CERTAIN PLANS TO ASSO-
7 CIATION HEALTH PLAN FUND.—

8 “(A) IN GENERAL.—In the case of an as-
9 sociation health plan described in subsection
10 (a)(2), the requirements of this subsection are
11 met if the plan makes payments into the Asso-
12 ciation Health Plan Fund under this subpara-
13 graph when they are due. Such payments shall
14 consist of annual payments in the amount of
15 \$5,000, and, in addition to such annual pay-
16 ments, such supplemental payments as the Sec-
17 retary may determine to be necessary under
18 paragraph (2). Payments under this paragraph
19 are payable to the Fund at the time determined
20 by the Secretary. Initial payments are due in
21 advance of certification under this part. Pay-
22 ments shall continue to accrue until a plan’s as-
23 sets are distributed pursuant to a termination
24 procedure.

1 “(B) PENALTIES FOR FAILURE TO MAKE
2 PAYMENTS.—If any payment is not made by a
3 plan when it is due, a late payment charge of
4 not more than 100 percent of the payment
5 which was not timely paid shall be payable by
6 the plan to the Fund.

7 “(C) CONTINUED DUTY OF THE SEC-
8 RETARY.—The Secretary shall not cease to
9 carry out the provisions of paragraph (2) on ac-
10 count of the failure of a plan to pay any pay-
11 ment when due.

12 “(2) PAYMENTS BY SECRETARY TO CONTINUE
13 EXCESS/STOP LOSS INSURANCE COVERAGE AND IN-
14 DEMNIFICATION INSURANCE COVERAGE FOR CER-
15 TAIN PLANS.—In any case in which the applicable
16 authority determines that there is, or that there is
17 reason to believe that there will be: (A) a failure to
18 take necessary corrective actions under section
19 809(a) with respect to an association health plan de-
20 scribed in subsection (a)(2); or (B) a termination of
21 such a plan under section 809(b) or 810(b)(8) (and,
22 if the applicable authority is not the Secretary, cer-
23 tifies such determination to the Secretary), the Sec-
24 retary shall determine the amounts necessary to
25 make payments to an insurer (designated by the

1 Secretary) to maintain in force excess/stop loss in-
2 surance coverage or indemnification insurance cov-
3 erage for such plan, if the Secretary determines that
4 there is a reasonable expectation that, without such
5 payments, claims would not be satisfied by reason of
6 termination of such coverage. The Secretary shall, to
7 the extent provided in advance in appropriation
8 Acts, pay such amounts so determined to the insurer
9 designated by the Secretary.

10 “(3) ASSOCIATION HEALTH PLAN FUND.—

11 “(A) IN GENERAL.—There is established
12 on the books of the Treasury a fund to be
13 known as the ‘Association Health Plan Fund’.
14 The Fund shall be available for making pay-
15 ments pursuant to paragraph (2). The Fund
16 shall be credited with payments received pursu-
17 ant to paragraph (1)(A), penalties received pur-
18 suant to paragraph (1)(B); and earnings on in-
19 vestments of amounts of the Fund under sub-
20 paragraph (B).

21 “(B) INVESTMENT.—Whenever the Sec-
22 retary determines that the moneys of the fund
23 are in excess of current needs, the Secretary
24 may request the investment of such amounts as
25 the Secretary determines advisable by the Sec-

retary of the Treasury in obligations issued or
guaranteed by the United States.

“(g) EXCESS/STOP LOSS INSURANCE.—For purposes
of this section—

“(1) AGGREGATE EXCESS/STOP LOSS INSUR-
ANCE.—The term ‘aggregate excess/stop loss insur-
ance’ means, in connection with an association
health plan, a contract—

“(A) under which an insurer (meeting such
minimum standards as the applicable authority
may prescribe by regulation) provides for pay-
ment to the plan with respect to aggregate
claims under the plan in excess of an amount
or amounts specified in such contract;

“(B) which is guaranteed renewable; and

“(C) which allows for payment of pre-
miums by any third party on behalf of the in-
sured plan.

“(2) SPECIFIC EXCESS/STOP LOSS INSUR-
ANCE.—The term ‘specific excess/stop loss insur-
ance’ means, in connection with an association
health plan, a contract—

“(A) under which an insurer (meeting such
minimum standards as the applicable authority
may prescribe by regulation) provides for pay-

1 ment to the plan with respect to claims under
2 the plan in connection with a covered individual
3 in excess of an amount or amounts specified in
4 such contract in connection with such covered
5 individual;

6 “(B) which is guaranteed renewable; and

7 “(C) which allows for payment of pre-
8 miums by any third party on behalf of the in-
9 sured plan.

10 “(h) INDEMNIFICATION INSURANCE.—For purposes
11 of this section, the term ‘indemnification insurance’
12 means, in connection with an association health plan, a
13 contract—

14 “(1) under which an insurer (meeting such min-
15 imum standards as the applicable authority may pre-
16 scribe by regulation) provides for payment to the
17 plan with respect to claims under the plan which the
18 plan is unable to satisfy by reason of a termination
19 pursuant to section 809(b) (relating to mandatory
20 termination);

21 “(2) which is guaranteed renewable and
22 noncancellable for any reason (except as the applica-
23 ble authority may prescribe by regulation); and

24 “(3) which allows for payment of premiums by
25 any third party on behalf of the insured plan.

1 “(i) RESERVES.—For purposes of this section, the
2 term ‘reserves’ means, in connection with an association
3 health plan, plan assets which meet the fiduciary stand-
4 ards under part 4 and such additional requirements re-
5 garding liquidity as the applicable authority may prescribe
6 by regulation.

7 “(j) SOLVENCY STANDARDS WORKING GROUP.—

8 “(1) IN GENERAL.—Within 90 days after the
9 date of the enactment of this part, the applicable au-
10 thority shall establish a Solvency Standards Working
11 Group. In prescribing the initial regulations under
12 this section, the applicable authority shall take into
13 account the recommendations of such Working
14 Group.

15 “(2) MEMBERSHIP.—The Working Group shall
16 consist of not more than 15 members appointed by
17 the applicable authority. The applicable authority
18 shall include among persons invited to membership
19 on the Working Group at least one of each of the
20 following:

21 “(A) a representative of the National Asso-
22 ciation of Insurance Commissioners;

23 “(B) a representative of the American
24 Academy of Actuaries;

1 “(C) a representative of the State govern-
2 ments, or their interests;

3 “(D) a representative of existing self-in-
4 sured arrangements, or their interests;

5 “(E) a representative of associations of the
6 type referred to in section 801(b)(1), or their
7 interests; and

8 “(F) a representative of multiemployer
9 plans that are group health plans, or their in-
10 terests.

11 **“SEC. 807. REQUIREMENTS FOR APPLICATION AND RE-**
12 **LATED REQUIREMENTS.**

13 “(a) **FILING FEE.**—Under the procedure prescribed
14 pursuant to section 802(a), an association health plan
15 shall pay to the applicable authority at the time of filing
16 an application for certification under this part a filing fee
17 in the amount of \$5,000, which shall be available in the
18 case of the Secretary, to the extent provided in appropria-
19 tion Acts, for the sole purpose of administering the certifi-
20 cation procedures applicable with respect to association
21 health plans.

22 “(b) **INFORMATION TO BE INCLUDED IN APPLICA-**
23 **TION FOR CERTIFICATION.**—An application for certifi-
24 cation under this part meets the requirements of this sec-
25 tion only if it includes, in a manner and form which shall

1 be prescribed by the applicable authority by regulation, at
2 least the following information:

3 “(1) IDENTIFYING INFORMATION.—The names
4 and addresses of—

5 “(A) the sponsor; and

6 “(B) the members of the board of trustees
7 of the plan.

8 “(2) STATES IN WHICH PLAN INTENDS TO DO
9 BUSINESS.—The States in which participants and
10 beneficiaries under the plan are to be located and
11 the number of them expected to be located in each
12 such State.

13 “(3) BONDING REQUIREMENTS.—Evidence pro-
14 vided by the board of trustees that the bonding re-
15 quirements of section 412 will be met as of the date
16 of the application or (if later) commencement of op-
17 erations.

18 “(4) PLAN DOCUMENTS.—A copy of the docu-
19 ments governing the plan (including any bylaws and
20 trust agreements), the summary plan description,
21 and other material describing the benefits that will
22 be provided to participants and beneficiaries under
23 the plan.

24 “(5) AGREEMENTS WITH SERVICE PRO-
25 VIDERS.—A copy of any agreements between the

1 plan and contract administrators and other service
2 providers.

3 “(6) FUNDING REPORT.—In the case of asso-
4 ciation health plans providing benefits options in ad-
5 dition to health insurance coverage, a report setting
6 forth information with respect to such additional
7 benefit options determined as of a date within the
8 120-day period ending with the date of the applica-
9 tion, including the following:

10 “(A) RESERVES.—A statement, certified
11 by the board of trustees of the plan, and a
12 statement of actuarial opinion, signed by a
13 qualified actuary, that all applicable require-
14 ments of section 806 are or will be met in ac-
15 cordance with regulations which the applicable
16 authority shall prescribe.

17 “(B) ADEQUACY OF CONTRIBUTION
18 RATES.—A statement of actuarial opinion,
19 signed by a qualified actuary, which sets forth
20 a description of the extent to which contribution
21 rates are adequate to provide for the payment
22 of all obligations and the maintenance of re-
23 quired reserves under the plan for the 12-
24 month period beginning with such date within
25 such 120-day period, taking into account the

1 expected coverage and experience of the plan. If
2 the contribution rates are not fully adequate,
3 the statement of actuarial opinion shall indicate
4 the extent to which the rates are inadequate
5 and the changes needed to ensure adequacy.

6 “(C) CURRENT AND PROJECTED VALUE OF
7 ASSETS AND LIABILITIES.—A statement of ac-
8 tuarial opinion signed by a qualified actuary,
9 which sets forth the current value of the assets
10 and liabilities accumulated under the plan and
11 a projection of the assets, liabilities, income,
12 and expenses of the plan for the 12-month pe-
13 riod referred to in subparagraph (B). The in-
14 come statement shall identify separately the
15 plan’s administrative expenses and claims.

16 “(D) COSTS OF COVERAGE TO BE
17 CHARGED AND OTHER EXPENSES.—A state-
18 ment of the costs of coverage to be charged, in-
19 cluding an itemization of amounts for adminis-
20 tration, reserves, and other expenses associated
21 with the operation of the plan.

22 “(E) OTHER INFORMATION.—Any other
23 information as may be determined by the appli-
24 cable authority, by regulation, as necessary to
25 carry out the purposes of this part.

1 “(c) FILING NOTICE OF CERTIFICATION WITH
2 STATES.—A certification granted under this part to an
3 association health plan shall not be effective unless written
4 notice of such certification is filed with the applicable
5 State authority of each State in which at least 25 percent
6 of the participants and beneficiaries under the plan are
7 located. For purposes of this subsection, an individual
8 shall be considered to be located in the State in which a
9 known address of such individual is located or in which
10 such individual is employed.

11 “(d) NOTICE OF MATERIAL CHANGES.—In the case
12 of any association health plan certified under this part,
13 descriptions of material changes in any information which
14 was required to be submitted with the application for the
15 certification under this part shall be filed in such form
16 and manner as shall be prescribed by the applicable au-
17 thority by regulation. The applicable authority may re-
18 quire by regulation prior notice of material changes with
19 respect to specified matters which might serve as the basis
20 for suspension or revocation of the certification.

21 “(e) REPORTING REQUIREMENTS FOR CERTAIN AS-
22 SOCIATION HEALTH PLANS.—An association health plan
23 certified under this part which provides benefit options in
24 addition to health insurance coverage for such plan year
25 shall meet the requirements of section 103 by filing an

1 annual report under such section which shall include infor-
2 mation described in subsection (b)(6) with respect to the
3 plan year and, notwithstanding section 104(a)(1)(A), shall
4 be filed with the applicable authority not later than 90
5 days after the close of the plan year (or on such later date
6 as may be prescribed by the applicable authority). The ap-
7 plicable authority may require by regulation such interim
8 reports as it considers appropriate.

9 “(f) ENGAGEMENT OF QUALIFIED ACTUARY.—The
10 board of trustees of each association health plan which
11 provides benefits options in addition to health insurance
12 coverage and which is applying for certification under this
13 part or is certified under this part shall engage, on behalf
14 of all participants and beneficiaries, a qualified actuary
15 who shall be responsible for the preparation of the mate-
16 rials comprising information necessary to be submitted by
17 a qualified actuary under this part. The qualified actuary
18 shall utilize such assumptions and techniques as are nec-
19 essary to enable such actuary to form an opinion as to
20 whether the contents of the matters reported under this
21 part—

22 “(1) are in the aggregate reasonably related to
23 the experience of the plan and to reasonable expecta-
24 tions; and

1 “(2) represent such actuary’s best estimate of
2 anticipated experience under the plan.

3 The opinion by the qualified actuary shall be made with
4 respect to, and shall be made a part of, the annual report.

5 **“SEC. 808. NOTICE REQUIREMENTS FOR VOLUNTARY TER-**
6 **MINATION.**

7 “Except as provided in section 809(b), an association
8 health plan which is or has been certified under this part
9 may terminate (upon or at any time after cessation of ac-
10 cruals in benefit liabilities) only if the board of trustees,
11 not less than 60 days before the proposed termination
12 date—

13 “(1) provides to the participants and bene-
14 ficiaries a written notice of intent to terminate stat-
15 ing that such termination is intended and the pro-
16 posed termination date;

17 “(2) develops a plan for winding up the affairs
18 of the plan in connection with such termination in
19 a manner which will result in timely payment of all
20 benefits for which the plan is obligated; and

21 “(3) submits such plan in writing to the appli-
22 cable authority.

23 Actions required under this section shall be taken in such
24 form and manner as may be prescribed by the applicable
25 authority by regulation.

1 **"SEC. 809. CORRECTIVE ACTIONS AND MANDATORY TERMI-**
2 **NATION.**

3 “(a) ACTIONS TO AVOID DEPLETION OF RE-
4 SERVES.—An association health plan which is certified
5 under this part and which provides benefits other than
6 health insurance coverage shall continue to meet the re-
7 quirements of section 806, irrespective of whether such
8 certification continues in effect. The board of trustees of
9 such plan shall determine quarterly whether the require-
10 ments of section 806 are met. In any case in which the
11 board determines that there is reason to believe that there
12 is or will be a failure to meet such requirements, or the
13 applicable authority makes such a determination and so
14 notifies the board, the board shall immediately notify the
15 qualified actuary engaged by the plan, and such actuary
16 shall, not later than the end of the next following month,
17 make such recommendations to the board for corrective
18 action as the actuary determines necessary to ensure com-
19 pliance with section 806. Not later than 30 days after re-
20 ceiving from the actuary recommendations for corrective
21 actions, the board shall notify the applicable authority (in
22 such form and manner as the applicable authority may
23 prescribe by regulation) of such recommendations of the
24 actuary for corrective action, together with a description
25 of the actions (if any) that the board has taken or plans
26 to take in response to such recommendations. The board

1 shall thereafter report to the applicable authority, in such
2 form and frequency as the applicable authority may speci-
3 fy to the board, regarding corrective action taken by the
4 board until the requirements of section 806 are met.

5 “(b) MANDATORY TERMINATION.—In any case in
6 which—

7 “(1) the applicable authority has been notified
8 under subsection (a) (or by an issuer of excess/stop
9 loss insurance or indemnity insurance pursuant to
10 section 806(a)) of a failure of an association health
11 plan which is or has been certified under this part
12 and is described in section 806(a)(2) to meet the re-
13 quirements of section 806 and has not been notified
14 by the board of trustees of the plan that corrective
15 action has restored compliance with such require-
16 ments; and

17 “(2) the applicable authority determines that
18 there is a reasonable expectation that the plan will
19 continue to fail to meet the requirements of section
20 806,

21 the board of trustees of the plan shall, at the direction
22 of the applicable authority, terminate the plan and, in the
23 course of the termination, take such actions as the appli-
24 cable authority may require, including satisfying any
25 claims referred to in section 806(a)(2)(B)(iii) and recov-

1 ering for the plan any liability under subsection
2 (a)(2)(B)(iii) or (e) of section 806, as necessary to ensure
3 that the affairs of the plan will be, to the maximum extent
4 possible, wound up in a manner which will result in timely
5 provision of all benefits for which the plan is obligated.

6 **“SEC. 810. TRUSTEESHIP BY THE SECRETARY OF INSOL-**
7 **VENT ASSOCIATION HEALTH PLANS PRO-**
8 **VIDING HEALTH BENEFITS IN ADDITION TO**
9 **HEALTH INSURANCE COVERAGE.**

10 “(a) APPOINTMENT OF SECRETARY AS TRUSTEE FOR
11 INSOLVENT PLANS.—Whenever the Secretary determines
12 that an association health plan which is or has been cer-
13 tified under this part and which is described in section
14 806(a)(2) will be unable to provide benefits when due or
15 is otherwise in a financially hazardous condition, as shall
16 be defined by the Secretary by regulation, the Secretary
17 shall, upon notice to the plan, apply to the appropriate
18 United States district court for appointment of the Sec-
19 retary as trustee to administer the plan for the duration
20 of the insolvency. The plan may appear as a party and
21 other interested persons may intervene in the proceedings
22 at the discretion of the court. The court shall appoint such
23 Secretary trustee if the court determines that the trustee-
24 ship is necessary to protect the interests of the partici-
25 pants and beneficiaries or providers of medical care or to

1 avoid any unreasonable deterioration of the financial con-
2 dition of the plan. The trusteeship of such Secretary shall
3 continue until the conditions described in the first sen-
4 tence of this subsection are remedied or the plan is termi-
5 nated.

6 “(b) POWERS AS TRUSTEE.—The Secretary, upon
7 appointment as trustee under subsection (a), shall have
8 the power—

9 “(1) to do any act authorized by the plan, this
10 title, or other applicable provisions of law to be done
11 by the plan administrator or any trustee of the plan;

12 “(2) to require the transfer of all (or any part)
13 of the assets and records of the plan to the Sec-
14 retary as trustee;

15 “(3) to invest any assets of the plan which the
16 Secretary holds in accordance with the provisions of
17 the plan, regulations prescribed by the Secretary,
18 and applicable provisions of law;

19 “(4) to require the sponsor, the plan adminis-
20 trator, any participating employer, and any employee
21 organization representing plan participants to fur-
22 nish any information with respect to the plan which
23 the Secretary as trustee may reasonably need in
24 order to administer the plan;

“(5) to collect for the plan any amounts due the plan and to recover reasonable expenses of the trusteeship;

“(6) to commence, prosecute, or defend on behalf of the plan any suit or proceeding involving the plan;

“(7) to issue, publish, or file such notices, statements, and reports as may be required by the Secretary by regulation or required by any order of the court;

“(8) to terminate the plan (or provide for its termination in accordance with section 809(b)) and liquidate the plan assets, to restore the plan to the responsibility of the sponsor, or to continue the trusteeship;

“(9) to provide for the enrollment of plan participants and beneficiaries under appropriate coverage options; and

“(10) to do such other acts as may be necessary to comply with this title or any order of the court and to protect the interests of plan participants and beneficiaries and providers of medical care.

1 “(c) NOTICE OF APPOINTMENT.—As soon as prac-
2 ticable after the Secretary’s appointment as trustee, the
3 Secretary shall give notice of such appointment to—

4 “(1) the sponsor and plan administrator;

5 “(2) each participant;

6 “(3) each participating employer; and

7 “(4) if applicable, each employee organization
8 which, for purposes of collective bargaining, rep-
9 resents plan participants.

10 “(d) ADDITIONAL DUTIES.—Except to the extent in-
11 consistent with the provisions of this title, or as may be
12 otherwise ordered by the court, the Secretary, upon ap-
13 pointment as trustee under this section, shall be subject
14 to the same duties as those of a trustee under section 704
15 of title 11, United States Code, and shall have the duties
16 of a fiduciary for purposes of this title.

17 “(e) OTHER PROCEEDINGS.—An application by the
18 Secretary under this subsection may be filed notwith-
19 standing the pendency in the same or any other court of
20 any bankruptcy, mortgage foreclosure, or equity receiver-
21 ship proceeding, or any proceeding to reorganize, conserve,
22 or liquidate such plan or its property, or any proceeding
23 to enforce a lien against property of the plan.

24 “(f) JURISDICTION OF COURT.—

“(1) IN GENERAL.—Upon the filing of an application for the appointment as trustee or the issuance of a decree under this section, the court to which the application is made shall have exclusive jurisdiction of the plan involved and its property wherever located with the powers, to the extent consistent with the purposes of this section, of a court of the United States having jurisdiction over cases under chapter 11 of title 11, United States Code. Pending an adjudication under this section such court shall stay, and upon appointment by it of the Secretary as trustee, such court shall continue the stay of, any pending mortgage foreclosure, equity receivership, or other proceeding to reorganize, conserve, or liquidate the plan, the sponsor, or property of such plan or sponsor, and any other suit against any receiver, conservator, or trustee of the plan, the sponsor, or property of the plan or sponsor. Pending such adjudication and upon the appointment by it of the Secretary as trustee, the court may stay any proceeding to enforce a lien against property of the plan or the sponsor or any other suit against the plan or the sponsor.

“(2) VENUE.—An action under this section may be brought in the judicial district where the

1 sponsor or the plan administrator resides or does
2 business or where any asset of the plan is situated.

3 A district court in which such action is brought may
4 issue process with respect to such action in any
5 other judicial district.

6 “(g) PERSONNEL.—In accordance with regulations
7 which shall be prescribed by the Secretary, the Secretary
8 shall appoint, retain, and compensate accountants, actu-
9 aries, and other professional service personnel as may be
10 necessary in connection with the Secretary’s service as
11 trustee under this section.

12 **“SEC. 811. STATE ASSESSMENT AUTHORITY.**

13 “(a) IN GENERAL.—Notwithstanding section 514, a
14 State may impose by law a contribution tax on an associa-
15 tion health plan described in section 806(a)(2), if the plan
16 commenced operations in such State after the date of the
17 enactment of this part.

18 “(b) CONTRIBUTION TAX.—For purposes of this sec-
19 tion, the term ‘contribution tax’ imposed by a State on
20 an association health plan means any tax imposed by such
21 State if—

22 “(1) such tax is computed by applying a rate to
23 the amount of premiums or contributions, with re-
24 spect to individuals covered under the plan who are
25 residents of such State, which are received by the

1 plan from participating employers located in such
2 State or from such individuals;

3 “(2) the rate of such tax does not exceed the
4 rate of any tax imposed by such State on premiums
5 or contributions received by insurers or health main-
6 tenance organizations for health insurance coverage
7 offered in such State in connection with a group
8 health plan;

9 “(3) such tax is otherwise nondiscriminatory;
10 and

11 “(4) the amount of any such tax assessed on
12 the plan is reduced by the amount of any tax or as-
13 sessment otherwise imposed by the State on pre-
14 miums, contributions, or both received by insurers or
15 health maintenance organizations for health insur-
16 ance coverage, aggregate excess/stop loss insurance
17 (as defined in section 806(g)(1)), specific excess/stop
18 loss insurance (as defined in section 806(g)(2)),
19 other insurance related to the provision of medical
20 care under the plan, or any combination thereof pro-
21 vided by such insurers or health maintenance organi-
22 zations in such State in connection with such plan.

23 **“SEC. 812. DEFINITIONS AND RULES OF CONSTRUCTION.**

24 “(a) **DEFINITIONS.**—For purposes of this part—

1 “(1) GROUP HEALTH PLAN.—The term ‘group
2 health plan’ has the meaning provided in section
3 733(a)(1) (after applying subsection (b) of this sec-
4 tion).

5 “(2) MEDICAL CARE.—The term ‘medical care’
6 has the meaning provided in section 733(a)(2).

7 “(3) HEALTH INSURANCE COVERAGE.—The
8 term ‘health insurance coverage’ has the meaning
9 provided in section 733(b)(1).

10 “(4) HEALTH INSURANCE ISSUER.—The term
11 ‘health insurance issuer’ has the meaning provided
12 in section 733(b)(2).

13 “(5) APPLICABLE AUTHORITY.—The term ‘ap-
14 plicable authority’ means the Secretary, except that,
15 in connection with any exercise of the Secretary’s
16 authority regarding which the Secretary is required
17 under section 506(d) to consult with a State, such
18 term means the Secretary, in consultation with such
19 State.

20 “(6) HEALTH STATUS-RELATED FACTOR.—The
21 term ‘health status-related factor’ has the meaning
22 provided in section 733(d)(2).

23 “(7) INDIVIDUAL MARKET.—

24 “(A) IN GENERAL.—The term ‘individual
25 market’ means the market for health insurance

1 coverage offered to individuals other than in
2 connection with a group health plan.

3 “(B) TREATMENT OF VERY SMALL
4 GROUPS.—

5 “(i) IN GENERAL.—Subject to clause
6 (ii), such term includes coverage offered in
7 connection with a group health plan that
8 has fewer than 2 participants as current
9 employees or participants described in sec-
10 tion 732(d)(3) on the first day of the plan
11 year.

12 “(ii) STATE EXCEPTION.—Clause (i)
13 shall not apply in the case of health insur-
14 ance coverage offered in a State if such
15 State regulates the coverage described in
16 such clause in the same manner and to the
17 same extent as coverage in the small group
18 market (as defined in section 2791(e)(5) of
19 the Public Health Service Act) is regulated
20 by such State.

21 “(8) PARTICIPATING EMPLOYER.—The term
22 ‘participating employer’ means, in connection with
23 an association health plan, any employer, if any indi-
24 vidual who is an employee of such employer, a part-
25 ner in such employer, or a self-employed individual

1 who is such employer (or any dependent, as defined
2 under the terms of the plan, of such individual) is
3 or was covered under such plan in connection with
4 the status of such individual as such an employee,
5 partner, or self-employed individual in relation to the
6 plan.

7 “(9) APPLICABLE STATE AUTHORITY.—The
8 term ‘applicable State authority’ means, with respect
9 to a health insurance issuer in a State, the State in-
10 surance commissioner or official or officials des-
11 ignated by the State to enforce the requirements of
12 title XXVII of the Public Health Service Act for the
13 State involved with respect to such issuer.

14 “(10) QUALIFIED ACTUARY.—The term ‘quali-
15 fied actuary’ means an individual who is a member
16 of the American Academy of Actuaries.

17 “(11) AFFILIATED MEMBER.—The term ‘affili-
18 ated member’ means, in connection with a sponsor—

19 “(A) a person who is otherwise eligible to
20 be a member of the sponsor but who elects an
21 affiliated status with the sponsor,

22 “(B) in the case of a sponsor with mem-
23 bers which consist of associations, a person who
24 is a member of any such association and elects
25 an affiliated status with the sponsor, or

“(C) in the case of an association health plan in existence on the date of the enactment of this part, a person eligible to be a member of the sponsor or one of its member associations.

“(12) LARGE EMPLOYER.—The term ‘large employer’ means, in connection with a group health plan with respect to a plan year, an employer who employed an average of at least 51 employees on business days during the preceding calendar year and who employs at least 2 employees on the first day of the plan year.

“(13) SMALL EMPLOYER.—The term ‘small employer’ means, in connection with a group health plan with respect to a plan year, an employer who is not a large employer.

“(b) RULES OF CONSTRUCTION.—

“(1) EMPLOYERS AND EMPLOYEES.—For purposes of determining whether a plan, fund, or program is an employee welfare benefit plan which is an association health plan, and for purposes of applying this title in connection with such plan, fund, or program so determined to be such an employee welfare benefit plan—

1 “(A) in the case of a partnership, the term
2 ‘employer’ (as defined in section 3(5)) includes
3 the partnership in relation to the partners, and
4 the term ‘employee’ (as defined in section 3(6))
5 includes any partner in relation to the partner-
6 ship; and

7 “(B) in the case of a self-employed indi-
8 vidual, the term ‘employer’ (as defined in sec-
9 tion 3(5)) and the term ‘employee’ (as defined
10 in section 3(6)) shall include such individual.

11 “(2) PLANS, FUNDS, AND PROGRAMS TREATED
12 AS EMPLOYEE WELFARE BENEFIT PLANS.—In the
13 case of any plan, fund, or program which was estab-
14 lished or is maintained for the purpose of providing
15 medical care (through the purchase of insurance or
16 otherwise) for employees (or their dependents) cov-
17 ered thereunder and which demonstrates to the Sec-
18 retary that all requirements for certification under
19 this part would be met with respect to such plan,
20 fund, or program if such plan, fund, or program
21 were a group health plan, such plan, fund, or pro-
22 gram shall be treated for purposes of this title as an
23 employee welfare benefit plan on and after the date
24 of such demonstration.”.

(2) CONFORMING AMENDMENTS TO PREEMPTION RULES.—

(A) Section 514(b)(6) of such Act (29 U.S.C. 1144(b)(6)) is amended by adding at the end the following new subparagraph:

“(E) The preceding subparagraphs of this paragraph do not apply with respect to any State law in the case of an association health plan which is certified under part 8.”.

(B) Section 514 of such Act (29 U.S.C. 1144) is amended—

(i) in subsection (b)(4), by striking “Subsection (a)” and inserting “Subsections (a) and (d)”;

(ii) in subsection (b)(5), by striking “subsection (a)” in subparagraph (A) and inserting “subsection (a) of this section and subsections (a)(2)(B) and (b) of section 805”, and by striking “subsection (a)” in subparagraph (B) and inserting “subsection (a) of this section or subsection (a)(2)(B) or (b) of section 805”;

(iii) by redesignating subsection (d) as subsection (e); and

1 (iv) by inserting after subsection (c)
2 the following new subsection:

3 “(d)(1) Except as provided in subsection (b)(4), the
4 provisions of this title shall supersede any and all State
5 laws insofar as they may now or hereafter preclude, or
6 have the effect of precluding, a health insurance issuer
7 from offering health insurance coverage in connection with
8 an association health plan which is certified under part
9 8.

10 “(2) Except as provided in paragraphs (4) and (5)
11 of subsection (b) of this section—

12 “(A) In any case in which health insurance cov-
13 erage of any policy type is offered under an associa-
14 tion health plan certified under part 8 to a partici-
15 pating employer operating in such State, the provi-
16 sions of this title shall supersede any and all laws
17 of such State insofar as they may preclude a health
18 insurance issuer from offering health insurance cov-
19 erage of the same policy type to other employers op-
20 erating in the State which are eligible for coverage
21 under such association health plan, whether or not
22 such other employers are participating employers in
23 such plan.

24 “(B) In any case in which health insurance cov-
25 erage of any policy type is offered in a State under

1 an association health plan certified under part 8 and
2 the filing, with the applicable State authority (as de-
3 fined in section 812(a)(9)), of the policy form in
4 connection with such policy type is approved by such
5 State authority, the provisions of this title shall su-
6 percede any and all laws of any other State in which
7 health insurance coverage of such type is offered, in-
8 sofar as they may preclude, upon the filing in the
9 same form and manner of such policy form with the
10 applicable State authority in such other State, the
11 approval of the filing in such other State.

12 “(3) Nothing in subsection (b)(6)(E) or the preceding
13 provisions of this subsection shall be construed, with re-
14 spect to health insurance issuers or health insurance cov-
15 erage, to supersede or impair the law of any State—

16 “(A) providing solvency standards or similar
17 standards regarding the adequacy of insurer capital,
18 surplus, reserves, or contributions, or

19 “(B) relating to prompt payment of claims.

20 “(4) For additional provisions relating to association
21 health plans, see subsections (a)(2)(B) and (b) of section
22 805.

23 “(5) For purposes of this subsection, the term ‘asso-
24 ciation health plan’ has the meaning provided in section
25 801(a), and the terms ‘health insurance coverage’, ‘par-

1 icipating employer', and 'health insurance issuer' have
 2 the meanings provided such terms in section 812, respec-
 3 tively.'".

4 (C) Section 514(b)(6)(A) of such Act (29
 5 U.S.C. 1144(b)(6)(A)) is amended—

6 (i) in clause (i)(II), by striking "and"
 7 at the end;

8 (ii) in clause (ii), by inserting "and
 9 which does not provide medical care (with-
 10 in the meaning of section 733(a)(2)),
 11 after "arrangement," and by striking
 12 "title." and inserting "title, and"; and

13 (iii) by adding at the end the fol-
 14 lowing new clause:

15 “(iii) subject to subparagraph (E), in the case
 16 of any other employee welfare benefit plan which is
 17 a multiple employer welfare arrangement and which
 18 provides medical care (within the meaning of section
 19 733(a)(2)), any law of any State which regulates in-
 20 surance may apply.”.

21 (D) Section 514(e) of such Act (as redesign-
 22 nated by subparagraph (B)(iii)) is amended—

23 (i) by striking "Nothing" and insert-
 24 ing "(1) Except as provided in paragraph
 25 (2), nothing"; and

1 (ii) by adding at the end the following
2 new paragraph:

3 “(2) Nothing in any other provision of law enacted
4 on or after the date of the enactment of part 8 shall be
5 construed to alter, amend, modify, invalidate, impair, or
6 supersede any provision of this title, except by specific
7 cross-reference to the affected section.”.

8 (3) PLAN SPONSOR.—Section 3(16)(B) of such
9 Act (29 U.S.C. 102(16)(B)) is amended by adding
10 at the end the following new sentence: “Such term
11 also includes a person serving as the sponsor of an
12 association health plan under part 8.”.

13 (4) DISCLOSURE OF SOLVENCY PROTECTIONS
14 RELATED TO SELF-INSURED AND FULLY INSURED
15 OPTIONS UNDER ASSOCIATION HEALTH PLANS.—
16 Section 102(b) of such Act (29 U.S.C. 102(b)) is
17 amended by adding at the end the following: “An as-
18 sociation health plan shall include in its summary
19 plan description, in connection with each benefit op-
20 tion, a description of the form of solvency or guar-
21 antee fund protection secured pursuant to this Act
22 or applicable State law, if any.”.

23 (5) SAVINGS CLAUSE.—Section 731(c) of such
24 Act is amended by inserting “or part 8” after “this
25 part”.

1 (6) REPORT TO THE CONGRESS REGARDING
 2 CERTIFICATION OF SELF-INSURED ASSOCIATION
 3 HEALTH PLANS.—Not later than January 1, 2012,
 4 the Secretary of Labor shall report to the Committee
 5 on Education and the Workforce of the House of
 6 Representatives and the Committee on Health, Edu-
 7 cation, Labor, and Pensions of the Senate the effect
 8 association health plans have had, if any, on reduc-
 9 ing the number of uninsured individuals.

10 (7) CLERICAL AMENDMENT.—The table of con-
 11 tents in section 1 of the Employee Retirement In-
 12 come Security Act of 1974 is amended by inserting
 13 after the item relating to section 734 the following
 14 new items:

“PART 8—RULES GOVERNING ASSOCIATION HEALTH PLANS

“801. Association health plans.

“802. Certification of association health plans.

“803. Requirements relating to sponsors and boards of trustees.

“804. Participation and coverage requirements.

“805. Other requirements relating to plan documents, contribution rates, and
 benefit options.

“806. Maintenance of reserves and provisions for solvency for plans providing
 health benefits in addition to health insurance coverage.

“807. Requirements for application and related requirements.

“808. Notice requirements for voluntary termination.

“809. Corrective actions and mandatory termination.

“810. Trusteeship by the Secretary of insolvent association health plans pro-
 viding health benefits in addition to health insurance coverage.

“811. State assessment authority.

“812. Definitions and rules of construction.”.

15 (b) CLARIFICATION OF TREATMENT OF SINGLE EM-
 16 PLOYER ARRANGEMENTS.—Section 3(40)(B) of the Em-

1 ployee Retirement Income Security Act of 1974 (29
2 U.S.C. 1002(40)(B)) is amended—

3 (1) in clause (i), by inserting after “control
4 group,” the following: “except that, in any case in
5 which the benefit referred to in subparagraph (A)
6 consists of medical care (as defined in section
7 812(a)(2)), two or more trades or businesses, wheth-
8 er or not incorporated, shall be deemed a single em-
9 ployer for any plan year of such plan, or any fiscal
10 year of such other arrangement, if such trades or
11 businesses are within the same control group during
12 such year or at any time during the preceding 1-year
13 period,”;

14 (2) in clause (iii), by striking “(iii) the deter-
15 mination” and inserting the following:

16 “(iii)(I) in any case in which the benefit re-
17 ferred to in subparagraph (A) consists of medical
18 care (as defined in section 812(a)(2)), the deter-
19 mination of whether a trade or business is under
20 ‘common control’ with another trade or business
21 shall be determined under regulations of the Sec-
22 retary applying principles consistent and coextensive
23 with the principles applied in determining whether
24 employees of two or more trades or businesses are
25 treated as employed by a single employer under sec-

1 tion 4001(b), except that, for purposes of this para-
2 graph, an interest of greater than 25 percent may
3 not be required as the minimum interest necessary
4 for common control, or

5 “(II) in any other case, the determination”;

6 (3) by redesignating clauses (iv) and (v) as
7 clauses (v) and (vi), respectively; and

8 (4) by inserting after clause (iii) the following
9 new clause:

10 “(iv) in any case in which the benefit referred
11 to in subparagraph (A) consists of medical care (as
12 defined in section 812(a)(2)), in determining, after
13 the application of clause (i), whether benefits are
14 provided to employees of two or more employers, the
15 arrangement shall be treated as having only one par-
16 ticipating employer if, after the application of clause
17 (i), the number of individuals who are employees and
18 former employees of any one participating employer
19 and who are covered under the arrangement is
20 greater than 75 percent of the aggregate number of
21 all individuals who are employees or former employ-
22 ees of participating employers and who are covered
23 under the arrangement,”.

24 (c) ENFORCEMENT PROVISIONS RELATING TO ASSO-
25 CIATION HEALTH PLANS.—

(1) CRIMINAL PENALTIES FOR CERTAIN WILLFUL MISREPRESENTATIONS.—Section 501 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1131) is amended—

(A) by inserting “(a)” after “Sec. 501.”;

and

(B) by adding at the end the following new subsection:

“(b) Any person who willfully falsely represents, to any employee, any employee’s beneficiary, any employer, the Secretary, or any State, a plan or other arrangement established or maintained for the purpose of offering or providing any benefit described in section 3(1) to employees or their beneficiaries as—

“(1) being an association health plan which has been certified under part 8;

“(2) having been established or maintained under or pursuant to one or more collective bargaining agreements which are reached pursuant to collective bargaining described in section 8(d) of the National Labor Relations Act (29 U.S.C. 158(d)) or paragraph Fourth of section 2 of the Railway Labor Act (45 U.S.C. 152, paragraph Fourth) or which are reached pursuant to labor-management negotiations

1 under similar provisions of State public employee re-
 2 lations laws; or

3 “(3) being a plan or arrangement described in
 4 section 3(40)(A)(i),
 5 shall, upon conviction, be imprisoned not more than 5
 6 years, be fined under title 18, United States Code, or
 7 both.”.

8 (2) CEASE ACTIVITIES ORDERS.—Section 502
 9 of such Act (29 U.S.C. 1132) is amended by adding
 10 at the end the following new subsection:

11 “(n) ASSOCIATION HEALTH PLAN CEASE AND DE-
 12 SIST ORDERS.—

13 “(1) IN GENERAL.—Subject to paragraph (2),
 14 upon application by the Secretary showing the oper-
 15 ation, promotion, or marketing of an association
 16 health plan (or similar arrangement providing bene-
 17 fits consisting of medical care (as defined in section
 18 733(a)(2))) that—

19 “(A) is not certified under part 8, is sub-
 20 ject under section 514(b)(6) to the insurance
 21 laws of any State in which the plan or arrange-
 22 ment offers or provides benefits, and is not li-
 23 censed, registered, or otherwise approved under
 24 the insurance laws of such State; or

1 “(B) is an association health plan certified
2 under part 8 and is not operating in accordance
3 with the requirements under part 8 for such
4 certification,
5 a district court of the United States shall enter an
6 order requiring that the plan or arrangement cease
7 activities.

8 “(2) EXCEPTION.—Paragraph (1) shall not
9 apply in the case of an association health plan or
10 other arrangement if the plan or arrangement shows
11 that—

12 “(A) all benefits under it referred to in
13 paragraph (1) consist of health insurance cov-
14 erage; and

15 “(B) with respect to each State in which
16 the plan or arrangement offers or provides ben-
17 efits, the plan or arrangement is operating in
18 accordance with applicable State laws that are
19 not superseded under section 514.

20 “(3) ADDITIONAL EQUITABLE RELIEF.—The
21 court may grant such additional equitable relief, in-
22 cluding any relief available under this title, as it
23 deems necessary to protect the interests of the pub-
24 lic and of persons having claims for benefits against
25 the plan.”.

1 (3) RESPONSIBILITY FOR CLAIMS PROCE-
 2 DURE.—Section 503 of such Act (29 U.S.C. 1133)
 3 is amended by inserting “(a) IN GENERAL.—” be-
 4 fore “In accordance”, and by adding at the end the
 5 following new subsection:

6 “(b) ASSOCIATION HEALTH PLANS.—The terms of
 7 each association health plan which is or has been certified
 8 under part 8 shall require the board of trustees or the
 9 named fiduciary (as applicable) to ensure that the require-
 10 ments of this section are met in connection with claims
 11 filed under the plan.”.

12 (d) COOPERATION BETWEEN FEDERAL AND STATE
 13 AUTHORITIES.—Section 506 of the Employee Retirement
 14 Income Security Act of 1974 (29 U.S.C. 1136) is amended
 15 by adding at the end the following new subsection:

16 “(d) CONSULTATION WITH STATES WITH RESPECT
 17 TO ASSOCIATION HEALTH PLANS.—

18 “(1) AGREEMENTS WITH STATES.—The Sec-
 19 retary shall consult with the State recognized under
 20 paragraph (2) with respect to an association health
 21 plan regarding the exercise of—

22 “(A) the Secretary’s authority under sec-
 23 tions 502 and 504 to enforce the requirements
 24 for certification under part 8; and

“(B) the Secretary’s authority to certify association health plans under part 8 in accordance with regulations of the Secretary applicable to certification under part 8.

“(2) RECOGNITION OF PRIMARY DOMICILE STATE.—In carrying out paragraph (1), the Secretary shall ensure that only one State will be recognized, with respect to any particular association health plan, as the State with which consultation is required. In carrying out this paragraph—

“(A) in the case of a plan which provides health insurance coverage (as defined in section 812(a)(3)), such State shall be the State with which filing and approval of a policy type offered by the plan was initially obtained, and

“(B) in any other case, the Secretary shall take into account the places of residence of the participants and beneficiaries under the plan and the State in which the trust is maintained.”.

(e) EFFECTIVE DATE AND TRANSITIONAL AND OTHER RULES.—

(1) EFFECTIVE DATE.—The amendments made by this section shall take effect 1 year after the date of the enactment of this Act. The Secretary of Labor

1 shall first issue all regulations necessary to carry out
2 such amendments within 1 year after the date of the
3 enactment of this Act.

4 (2) TREATMENT OF CERTAIN EXISTING
5 HEALTH BENEFITS PROGRAMS.—

6 (A) IN GENERAL.—In any case in which,
7 as of the date of the enactment of this Act, an
8 arrangement is maintained in a State for the
9 purpose of providing benefits consisting of med-
10 ical care for the employees and beneficiaries of
11 its participating employers, at least 200 partici-
12 pating employers make contributions to such
13 arrangement, such arrangement has been in ex-
14 istence for at least 10 years, and such arrange-
15 ment is licensed under the laws of one or more
16 States to provide such benefits to its partici-
17 pating employers, upon the filing with the ap-
18 plicable authority (as defined in section
19 812(a)(5) of the Employee Retirement Income
20 Security Act of 1974 (as amended by this sub-
21 title)) by the arrangement of an application for
22 certification of the arrangement under part 8 of
23 subtitle B of title I of such Act—

1 (i) such arrangement shall be deemed
2 to be a group health plan for purposes of
3 title I of such Act;

4 (ii) the requirements of sections
5 801(a) and 803(a) of the Employee Retirement
6 Income Security Act of 1974 shall be
7 deemed met with respect to such arrange-
8 ment;

9 (iii) the requirements of section
10 803(b) of such Act shall be deemed met, if
11 the arrangement is operated by a board of
12 directors which—

13 (I) is elected by the participating
14 employers, with each employer having
15 one vote; and

16 (II) has complete fiscal control
17 over the arrangement and which is re-
18 sponsible for all operations of the ar-
19 rangement;

20 (iv) the requirements of section
21 804(a) of such Act shall be deemed met
22 with respect to such arrangement; and

23 (v) the arrangement may be certified
24 by any applicable authority with respect to
25 its operations in any State only if it oper-

1 ates in such State on the date of certifi-
2 cation.

3 The provisions of this subparagraph shall cease
4 to apply with respect to any such arrangement
5 at such time after the date of the enactment of
6 this Act as the applicable requirements of this
7 subparagraph are not met with respect to such
8 arrangement.

9 (B) DEFINITIONS.—For purposes of this
10 paragraph, the terms “group health plan”,
11 “medical care”, and “participating employer”
12 shall have the meanings provided in section 812
13 of the Employee Retirement Income Security
14 Act of 1974, except that the reference in para-
15 graph (7) of such section to an “association
16 health plan” shall be deemed a reference to an
17 arrangement referred to in this paragraph.

18 **Subtitle C—Health Care Services** 19 **Commission**

20 **PART 1—ESTABLISHMENT AND GENERAL DUTIES**

21 **SEC. 121. ESTABLISHMENT.**

22 (a) IN GENERAL.—There is hereby established a
23 Health Care Services Commission (in this subtitle referred
24 to as the “Commission”) to be composed of five commis-
25 sioners (in this subtitle referred to as the “Commis-

1 sioners'') to be appointed by the President by and with
2 the advice and consent of the Senate. Not more than three
3 of such commissioners shall be members of the same polit-
4 ical party, and in making appointments members of dif-
5 ferent political parties shall be appointed alternately as
6 nearly as may be practicable. No commissioner shall en-
7 gage in any other business, vocation, or employment than
8 that of serving as commissioner. Each commissioner shall
9 hold office for a term of five years and until his successor
10 is appointed and has qualified, except that he shall not
11 so continue to serve beyond the expiration of the next ses-
12 sion of Congress subsequent to the expiration of said fixed
13 term of office, and except (1) any commissioner appointed
14 to fill a vacancy occurring prior to the expiration of the
15 term for which his predecessor was appointed shall be ap-
16 pointed for the remainder of such term, and (2) the terms
17 of office of the commissioners first taking office after the
18 enactment of this subtitle shall expire as designated by
19 the President at the time of nomination, one at the end
20 of one year, one at the end of two years, one at the end
21 of three years, one at the end of four years, and one at
22 the end of five years, after the date of the enactment of
23 this Act.

24 (b) PURPOSE.—The purpose of the Commission is to
25 enhance the quality, appropriateness, and effectiveness of

1 health care services, and access to such services, through
2 the establishment of a broad base of scientific research
3 and through the promotion of improvements in clinical
4 practice and in the organization, financing, and delivery
5 of health care services.

6 (c) APPOINTMENT OF CHAIRMAN.—The President
7 shall, from among the Commissioners appointed under
8 subsection (a), designate an individual to serve as the
9 Chairman of the Commission.

10 **SEC. 122. GENERAL AUTHORITIES AND DUTIES.**

11 (a) IN GENERAL.—In carrying out section 121(b),
12 the Commissioners shall conduct and support research,
13 demonstration projects, evaluations, training, guideline de-
14 velopment, and the dissemination of information, on
15 health care services and on systems for the delivery of
16 such services, including activities with respect to—

17 (1) the effectiveness, efficiency, and quality of
18 health care services;

19 (2) subject to subsection (d), the outcomes of
20 health care services and procedures;

21 (3) clinical practice, including primary care and
22 practice-oriented research;

23 (4) health care technologies, facilities, and
24 equipment;

(5) health care costs, productivity, and market forces;

(6) health promotion and disease prevention;

(7) health statistics and epidemiology; and

(8) medical liability.

(b) REQUIREMENTS WITH RESPECT TO RURAL AREAS AND UNDERSERVED POPULATIONS.—In carrying out subsection (a), the Commissioners shall undertake and support research, demonstration projects, and evaluations with respect to—

(1) the delivery of health care services in rural areas (including frontier areas); and

(2) the health of low-income groups, minority groups, and the elderly.

SEC. 123. DISSEMINATION.

(a) IN GENERAL.—The Commissioners shall—

(1) promptly publish, make available, and otherwise disseminate, in a form understandable and on as broad a basis as practicable so as to maximize its use, the results of research, demonstration projects, and evaluations conducted or supported under this subtitle and the guidelines, standards, and review criteria developed under this subtitle;

1 (2) promptly make available to the public data
2 developed in such research, demonstration projects,
3 and evaluations; and

4 (3) as appropriate, provide technical assistance
5 to State and local government and health agencies
6 and conduct liaison activities to such agencies to fos-
7 ter dissemination.

8 (b) PROHIBITION AGAINST RESTRICTIONS.—Except
9 as provided in subsection (c), the Commissioners may not
10 restrict the publication or dissemination of data from, or
11 the results of, projects conducted or supported under this
12 subtitle.

13 (c) LIMITATION ON USE OF CERTAIN INFORMA-
14 TION.—No information, if an establishment or person sup-
15 plying the information or described in it is identifiable,
16 obtained in the course of activities undertaken or sup-
17 ported under this subtitle may be used for any purpose
18 other than the purpose for which it was supplied unless
19 such establishment or person has consented (as deter-
20 mined under regulations of the Secretary) to its use for
21 such other purpose. Such information may not be pub-
22 lished or released in other form if the person who supplied
23 the information or who is described in it is identifiable
24 unless such person has consented (as determined under

1 regulations of the Secretary) to its publication or release
2 in other form.

3 (d) CERTAIN INTERAGENCY AGREEMENT.—The
4 Commissioners and the Director of the National Library
5 of Medicine shall enter into an agreement providing for
6 the implementation of subsection (a)(1).

7 **PART 2—FORUM FOR QUALITY AND**
8 **EFFECTIVENESS IN HEALTH CARE**

9 **SEC. 131. ESTABLISHMENT OF OFFICE.**

10 There is established within the Commission an office
11 to be known as the Office of the Forum for Quality and
12 Effectiveness in Health Care. The office shall be headed
13 by a director (referred to in this subtitle as the “Direc-
14 tor”), who shall be appointed by the Commissioners.

15 **SEC. 132. MEMBERSHIP.**

16 (a) IN GENERAL.—The Office of the Forum for Qual-
17 ity and Effectiveness in Health Care shall be composed
18 of 15 individuals nominated by private sector health care
19 organizations and appointed by the Commission and shall
20 include representation from at least the following:

- 21 (1) Health insurance industry.
22 (2) Health care provider groups.
23 (3) Non-profit organizations.
24 (4) Rural health organizations.

25 (b) TERMS.—

1 (1) IN GENERAL.—Except as provided in sub-
2 paragraph (B), members of the Office of the Forum
3 for Quality and Effectiveness in Health Care shall
4 serve for a term of 5 years.

5 (2) STAGGERED ROTATION.—Of the members
6 first appointed to the Office of the Forum for Qual-
7 ity and Effectiveness in Health Care, the Commis-
8 sion shall appoint 5 members to serve for a term of
9 2 years, 5 members to serve for a term of 3 years,
10 and 5 members to serve for a term of 4 years.

11 (c) TREATMENT OF OTHER EMPLOYMENT.—Each
12 member of the Office of the Forum for Quality and Effec-
13 tiveness in Health Care shall serve the Office independ-
14 ently from any other position of employment.

15 **SEC. 133. DUTIES.**

16 (a) ESTABLISHMENT OF FORUM PROGRAM.—The
17 Commissioners, acting through the Director, shall estab-
18 lish a program to be known as the Forum for Quality and
19 Effectiveness in Health Care. For the purpose of pro-
20 moting transparency in price, quality, appropriateness,
21 and effectiveness of health care, the Director, using the
22 process set forth in section 134, shall arrange for the de-
23 velopment and periodic review and updating of standards
24 of quality, performance measures, and medical review cri-
25 teria through which health care providers and other appro-

1 priate entities may assess or review the provision of health
2 care and assure the quality of such care.

3 (b) CERTAIN REQUIREMENTS.—Guidelines, stand-
4 ards, performance measures, and review criteria under
5 subsection (a) shall—

6 (1) be based on the best available research and
7 professional judgment regarding the effectiveness
8 and appropriateness of health care services and pro-
9 cedures; and

10 (2) be presented in formats appropriate for use
11 by physicians, health care practitioners, providers,
12 medical educators, and medical review organizations
13 and in formats appropriate for use by consumers of
14 health care.

15 (c) AUTHORITY FOR CONTRACTS.—In carrying out
16 this part, the Director may enter into contracts with pub-
17 lic or nonprofit private entities.

18 (d) PUBLIC DISCLOSURE OF RECOMMENDATIONS.—
19 For each fiscal year beginning with 2010, the Director
20 shall make publicly available the following:

21 (1) quarterly reports for public comment that
22 include proposed recommendations for guidelines,
23 standards, performance measures, and review cri-
24 teria under subsection (a) and any updates to such

1 guidelines, standards, performance measures, and
2 review criteria; and

3 (2) after consideration of such comments, a
4 final report that contains final recommendations for
5 such guidelines, standards, performance measures,
6 review criteria, and updates.

7 (e) DATE CERTAIN FOR INITIAL GUIDELINES AND
8 STANDARDS.—The Commissioners, by not later than Jan-
9 uary 1, 2012, shall assure the development of an initial
10 set of guidelines, standards, performance measures, and
11 review criteria under subsection (a).

12 **SEC. 134. ADOPTION AND ENFORCEMENT OF GUIDELINES**
13 **AND STANDARDS.**

14 (a) ADOPTION OF RECOMMENDATIONS OF FORUM
15 FOR QUALITY AND EFFECTIVENESS IN HEALTH CARE.—
16 For each fiscal year, the Commissioners shall adopt the
17 recommendations made for such year in the final report
18 under subsection (d)(2) of section 133 for guidelines,
19 standards, performance measures, and review criteria de-
20 scribed in subsection (a) of such section.

21 (b) ENFORCEMENT AUTHORITY.—The Commis-
22 sioners , in consultation with the Secretary of Health and
23 Human Services, have the authority to make recommenda-
24 tions to the Secretary to enforce compliance of health care
25 providers with the guidelines, standards, performance

1 measures, and review criteria adopted under subsection
2 (a). Such recommendations may include the following,
3 with respect to a health care provider who is not in compli-
4 ance with such guidelines, standards, measures, and cri-
5 teria:

6 (1) Exclusion from participation in Federal
7 health care programs (as defined in section
8 1128B(f) of the Social Security Act).

9 (2) Imposition of a civil money penalty on such
10 provider.

11 **SEC. 135. ADDITIONAL REQUIREMENTS.**

12 (a) PROGRAM AGENDA.—The Commissioners shall
13 provide for an agenda for the development of the guide-
14 lines, standards, performance measures, and review cri-
15 teria described in section 133(a), including with respect
16 to the standards, performance measures, and review cri-
17 teria, identifying specific aspects of health care for which
18 the standards, performance measures, and review criteria
19 are to be developed and those that are to be given priority
20 in the development of the standards, performance meas-
21 ures, and review criteria.

22 **PART 3—GENERAL PROVISIONS**

23 **SEC. 141. CERTAIN ADMINISTRATIVE AUTHORITIES.**

24 The Commissioners, in carrying out this subtitle, may
25 accept voluntary and uncompensated services.

1 **SEC. 142. FUNDING.**

2 For the purpose of carrying out this subtitle, there
3 are authorized to be appropriated such sums as may be
4 necessary for fiscal years 2010 through 2014.

5 **SEC. 143. DEFINITIONS.**

6 For purposes of this subtitle:

7 (1) The term “Commissioners” means the Com-
8 missioners of the Health Care Services Commission.

9 (2) The term “Commission” means the Health
10 Care Services Commission.

11 (3) The term “Director” means the Director of
12 the Office of the Forum for Quality and Effective-
13 ness in Health Care.

14 (4) The term “Secretary” means the Secretary
15 of Health and Human Services.

16 **PART 4—TERMINATIONS AND TRANSITION**

17 **SEC. 151. TERMINATION OF AGENCY FOR HEALTHCARE RE-**
18 **SEARCH AND QUALITY.**

19 As of the date of the enactment of this Act, the Agen-
20 cy for Healthcare Research and Quality is terminated, and
21 title IX of the Public Health Service Act is repealed.

22 **SEC. 152. TRANSITION.**

23 All orders, grants, contracts, privileges, and other de-
24 terminations or actions of the Agency for Healthcare Re-
25 search and Quality that are effective as of the date before
26 the date of the enactment of this Act, shall be transferred

1 to the Secretary and shall continue in effect according to
2 their terms unless changed pursuant to law.

3 **PART 5—INDEPENDENT HEALTH RECORD TRUST**

4 **SEC. 161. SHORT TITLE OF PART.**

5 This part may be cited as the “Independent Health
6 Record Trust Act of 2008”.

7 **SEC. 162. PURPOSE.**

8 It is the purpose of this part et to provide for the
9 establishment of a nationwide health information tech-
10 nology network that—

11 (1) improves health care quality, reduces med-
12 ical errors, increases the efficiency of care, and ad-
13 vances the delivery of appropriate, evidence-based
14 health care services;

15 (2) promotes wellness, disease prevention, and
16 the management of chronic illnesses by increasing
17 the availability and transparency of information re-
18 lated to the health care needs of an individual;

19 (3) ensures that appropriate information nec-
20 essary to make medical decisions is available in a us-
21 able form at the time and in the location that the
22 medical service involved is provided;

23 (4) produces greater value for health care ex-
24 penditures by reducing health care costs that result

1 from inefficiency, medical errors, inappropriate care,
2 and incomplete information;

3 (5) promotes a more effective marketplace,
4 greater competition, greater systems analysis, in-
5 creased choice, enhanced quality, and improved out-
6 comes in health care services;

7 (6) improves the coordination of information
8 and the provision of such services through an effec-
9 tive infrastructure for the secure and authorized ex-
10 change and use of health information; and

11 (7) ensures that the health information privacy,
12 security, and confidentiality of individually identifi-
13 able health information is protected.

14 **SEC. 163. DEFINITIONS.**

15 In this part:

16 (1) ACCESS.—The term “access” means, with
17 respect to an electronic health record, entering infor-
18 mation into such account as well as retrieving infor-
19 mation from such account.

20 (2) ACCOUNT.—The term “account” means an
21 electronic health record of an individual contained in
22 an independent health record trust.

23 (3) AFFIRMATIVE CONSENT.—The term “af-
24 firmative consent” means, with respect to an elec-
25 tronic health record of an individual contained in an

1 IHRT, express consent given by the individual for
2 the use of such record in response to a clear and
3 conspicuous request for such consent or at the indi-
4 vidual's own initiative.

5 (4) AUTHORIZED EHR DATA USER.—The term
6 “authorized EHR data user” means, with respect to
7 an electronic health record of an IHRT participant
8 contained as part of an IHRT, any entity (other
9 than the participant) authorized (in the form of af-
10 firmative consent) by the participant to access the
11 electronic health record.

12 (5) CONFIDENTIALITY.—The term “confiden-
13 tiality” means, with respect to individually identifi-
14 able health information of an individual, the obliga-
15 tion of those who receive such information to respect
16 the health information privacy of the individual.

17 (6) ELECTRONIC HEALTH RECORD.—The term
18 “electronic health record” means a longitudinal col-
19 lection of information concerning a single individual,
20 including medical records and personal health infor-
21 mation, that is stored electronically.

22 (7) HEALTH INFORMATION PRIVACY.—The
23 term “health information privacy” means, with re-
24 spect to individually identifiable health information
25 of an individual, the right of such individual to con-

1 trol the acquisition, uses, or disclosures of such in-
2 formation.

3 (8) HEALTH PLAN.—The term “health plan”
4 means a group health plan (as defined in section
5 2208(1) of the Public Health Service Act (42 U.S.C.
6 300bb–8(1))) as well as a plan that offers health in-
7 surance coverage in the individual market.

8 (9) HIPAA PRIVACY REGULATIONS.—The term
9 “HIPAA privacy regulations” means the regulations
10 promulgated under section 264(c) of the Health In-
11 surance Portability and Accountability Act of 1996
12 (42 U.S.C. 1320d–2 note).

13 (10) INDEPENDENT HEALTH RECORD TRUST;
14 IHRT.—The terms “independent health record trust”
15 and “IHRT” mean a legal arrangement under the
16 administration of an IHRT operator that meets the
17 requirements of this part with respect to electronic
18 health records of individuals participating in the
19 trust or IHRT.

20 (11) IHRT OPERATOR.—The term “IHRT op-
21 erator” means, with respect to an IHRT, the organi-
22 zation that is responsible for the administration and
23 operation of the IHRT in accordance with this part.

24 (12) IHRT PARTICIPANT.—The term “IHRT
25 participant” means, with respect to an IHRT, an in-

dividual who has a participation agreement in effect with respect to the maintenance of the individual's electronic health record by the IHRT.

(13) INDIVIDUALLY IDENTIFIABLE HEALTH INFORMATION.—The term “individually identifiable health information” has the meaning given such term in section 1171(6) of the Social Security Act (42 U.S.C. 1320d(6)).

(14) SECURITY.—The term “security” means, with respect to individually identifiable health information of an individual, the physical, technological, or administrative safeguards or tools used to protect such information from unwarranted access or disclosure.

SEC. 164. ESTABLISHMENT, CERTIFICATION, AND MEMBERSHIP OF INDEPENDENT HEALTH RECORD TRUSTS.

(a) ESTABLISHMENT.—Not later than one year after the date of the enactment of this Act, the Federal Trade Commission, in consultation with the National Committee on Vital and Health Statistics, shall prescribe standards for the establishment, certification, operation, and interoperability of IHRTs to carry out the purposes described in section 162 in accordance with the provisions of this part.

1 (b) CERTIFICATION.—

2 (1) CERTIFICATION BY FTC.—The Federal
3 Trade Commission shall provide for the certification
4 of IHRTs. No IHRT may be certified unless the
5 IHRT is determined to meet the standards for cer-
6 tification established under subsection (a).

7 (2) DECERTIFICATION.—The Federal Trade
8 Commission shall establish a process for the revoca-
9 tion of certification of an IHRT under this section
10 in the case that the IHRT violates the standards es-
11 tablished under subsection (a).

12 (c) MEMBERSHIP.—

13 (1) IN GENERAL.—To be eligible to be a partic-
14 ipant in an IHRT, an individual shall—

15 (A) submit to the IHRT information as re-
16 quired by the IHRT to establish an electronic
17 health record with the IHRT; and

18 (B) enter into a privacy protection agree-
19 ment described in section 166(b)(1) with the
20 IHRT.

21 The process to determine eligibility of an individual
22 under this subsection shall allow for the establish-
23 ment by such individual of an electronic health
24 record as expeditiously as possible if such individual
25 is determined so eligible.

(2) NO LIMITATION ON MEMBERSHIP.—Nothing in this subsection shall be construed to permit an IHRT to restrict membership, including on the basis of health condition.

SEC. 165. DUTIES OF IHRT TO IHRT PARTICIPANTS.

(a) FIDUCIARY DUTY OF IHRT; PENALTIES FOR VIOLATIONS OF FIDUCIARY DUTY.—

(1) FIDUCIARY DUTY.—With respect to the electronic health record of an IHRT participant maintained by an IHRT, the IHRT shall have a fiduciary duty to act for the benefit and in the interests of such participant and of the IHRT as a whole. Such duty shall include obtaining the affirmative consent of such participant prior to the release of information in such participant's electronic health record in accordance with the requirements of this part.

(2) PENALTIES.—If the IHRT knowingly or recklessly breaches the fiduciary duty described in paragraph (1), the IHRT shall be subject to the following penalties:

(A) Loss of certification of the IHRT.

(B) A fine that is not in excess of \$50,000.

(C) A term of imprisonment for the individuals involved of not more than 5 years.

1 (b) ELECTRONIC HEALTH RECORD DEEMED TO BE
2 HELD IN TRUST BY IHRT.—With respect to an indi-
3 vidual, an electronic health record maintained by an IHRT
4 shall be deemed to be held in trust by the IHRT for the
5 benefit of the individual and the IHRT shall have no legal
6 or equitable interest in such electronic health record.

7 **SEC. 166. AVAILABILITY AND USE OF INFORMATION FROM**
8 **RECORDS IN IHRT CONSISTENT WITH PRI-**
9 **VACY PROTECTIONS AND AGREEMENTS.**

10 (a) PROTECTED ELECTRONIC HEALTH RECORDS
11 USE AND ACCESS.—

12 (1) GENERAL RIGHTS REGARDING USES OF IN-
13 FORMATION.—

14 (A) IN GENERAL.—With respect to the
15 electronic health record of an IHRT participant
16 maintained by an IHRT, subject to paragraph
17 (2)(C), primary uses and secondary uses (de-
18 scribed in subparagraphs (B) and (C), respec-
19 tively) of information within such record (other
20 than by such participant) shall be permitted
21 only upon the authorization of such use, prior
22 to such use, by such participant.

23 (B) PRIMARY USES.—For purposes of sub-
24 paragraph (A) and with respect to an electronic
25 health record of an individual, a primary use is

1 a use for purposes of the individual's self-care
2 or care by health care professionals.

3 (C) SECONDARY USES.—For purposes of
4 subparagraph (B) and with respect to an elec-
5 tronic health record of an individual, a sec-
6 ondary use is any use not described in subpara-
7 graph (B) and includes a use for purposes of
8 public health research or other related activi-
9 ties. Additional authorization is required for a
10 secondary use extending beyond the original
11 purpose of the secondary use authorized by the
12 IHRT participant involved. Nothing in this
13 paragraph shall be construed as requiring au-
14 thorization for every secondary use that is with-
15 in the authorized original purpose.

16 (2) RULES FOR PRIMARY USE OF RECORDS FOR
17 HEALTH CARE PURPOSES.—With respect to the elec-
18 tronic health record of an IHRT participant (or
19 specified parts of such electronic health record)
20 maintained by an IHRT standards for access to
21 such record shall provide for the following:

22 (A) ACCESS BY IHRT PARTICIPANTS TO
23 THEIR ELECTRONIC HEALTH RECORDS.—

24 (i) OWNERSHIP.—The participant
25 maintains ownership over the entire elec-

1 tronic health record (and all portions of
2 such record) and shall have the right to
3 electronically access and review the con-
4 tents of the entire record (and any portion
5 of such record) at any time, in accordance
6 with this subparagraph.

7 (ii) ADDITION OF PERSONAL INFOR-
8 MATION.—The participant may add per-
9 sonal health information to the health
10 record of that participant, except that such
11 participant shall not alter information that
12 is entered into the electronic health record
13 by any authorized EHR data user. Such
14 participant shall have the right to propose
15 an amendment to information that is en-
16 tered by an authorized EHR data user
17 pursuant to standards prescribed by the
18 Federal Trade Commission for purposes of
19 amending such information.

20 (iii) IDENTIFICATION OF INFORMA-
21 TION ENTERED BY PARTICIPANT.—Any ad-
22 ditions or amendments made by the partic-
23 ipant to the health record shall be identi-
24 fied and disclosed within such record as
25 being made by such participant.

1 (B) ACCESS BY ENTITIES OTHER THAN
2 IHRT PARTICIPANT.—

3 (i) AUTHORIZED ACCESS ONLY.—Ex-
4 cept as provided under subparagraph (C)
5 and paragraph (4), access to the electronic
6 health record (or any portion of the
7 record)—

8 (I) may be made only by author-
9 ized EHR data users and only to such
10 portions of the record as specified by
11 the participant; and

12 (II) may be limited by the partic-
13 ipant for purposes of entering infor-
14 mation into such record, retrieving in-
15 formation from such record, or both.

16 (ii) IDENTIFICATION OF ENTITY THAT
17 ENTERS INFORMATION.—Any information
18 that is added by an authorized EHR data
19 user to the health record shall be identified
20 and disclosed within such record as being
21 made by such user.

22 (iii) SATISFACTION OF HIPAA PRIVACY
23 REGULATIONS.—In the case of a record of
24 a covered entity (as defined for purposes of
25 HIPAA privacy regulations), with respect

1 to an individual, if such individual is an
2 IHRT participant with an independent
3 health record trust and such covered entity
4 is an authorized EHR data user, the re-
5 quirement under the HIPAA privacy regu-
6 lations for such entity to provide the
7 record to the participant shall be deemed
8 met if such entity, without charge to the
9 IHRT or the participant—

10 (I) forwards to the trust an ap-
11 propriately formatted electronic copy
12 of the record (and updates to such
13 records) for inclusion in the electronic
14 health record of the participant main-
15 tained by the trust;

16 (II) enters such record into the
17 electronic health record of the partici-
18 pant so maintained; or

19 (III) otherwise makes such
20 record available for electronic access
21 by the IHRT or the individual in a
22 manner that permits such record to
23 be included in the account of the indi-
24 vidual contained in the IHRT.

(iv) NOTIFICATION OF SENSITIVE INFORMATION.—Any information, with respect to the participant, that is sensitive information, as specified by the Federal Trade Commission, shall not be forwarded or entered by an authorized EHR data user into the electronic health record of the participant maintained by the trust unless the user certifies that the participant has been notified of such information.

(C) DEEMED AUTHORIZATION FOR ACCESS FOR EMERGENCY HEALTH CARE.—

(i) FINDINGS.—Congress finds that—

(I) given the size and nature of visits to emergency departments in the United States, readily available health information could make the difference between life and death; and

(II) because of the case mix and volume of patients treated, emergency departments are well positioned to provide information for public health surveillance, community risk assessment, research, education, training, quality improvement, and other uses.

1 (ii) USE OF INFORMATION.—With re-
2 spect to the electronic health record of an
3 IHRT participant (or specified parts of
4 such electronic health record) maintained
5 by an IHRT, the participant shall be
6 deemed as providing authorization (in the
7 form of affirmative consent) for health
8 care providers to access, in connection with
9 providing emergency care services to the
10 participant, a limited, authenticated infor-
11 mation set concerning the participant for
12 emergency response purposes, unless the
13 participant specifies that such information
14 set (or any portion of such information
15 set) may not be so accessed. Such limited
16 information set may include information—

17 (I) patient identification data, as
18 determined appropriate by the partici-
19 pant;

20 (II) provider identification that
21 includes the use of unique provider
22 identifiers;

23 (III) payment information;

(IV) information related to the individual's vitals, allergies, and medication history;

(V) information related to existing chronic problems and active clinical conditions of the participant; and

(VI) information concerning physical examinations, procedures, results, and diagnosis data.

(3) RULES FOR SECONDARY USES OF RECORDS
FOR RESEARCH AND OTHER PURPOSES.—

(A) IN GENERAL.—With respect to the electronic health record of an IHRT participant (or specified parts of such electronic health record) maintained by an IHRT, the IHRT may sell such record (or specified parts of such record) only if—

(i) the transfer is authorized by the participant pursuant to an agreement between the participant and the IHRT and is in accordance with the privacy protection agreement described in subsection (b)(1) entered into between such participant and such IHRT;

1 (ii) such agreement includes param-
2 eters with respect to the disclosure of in-
3 formation involved and a process for the
4 authorization of the further disclosure of
5 information in such record;

6 (iii) the information involved is to be
7 used for research or other activities only as
8 provided for in the agreement;

9 (iv) the recipient of the information
10 provides assurances that the information
11 will not be further transferred or reused in
12 violation of such agreement; and

13 (v) the transfer otherwise meets the
14 requirements and standards prescribed by
15 the Federal Trade Commission.

16 (B) TREATMENT OF PUBLIC HEALTH RE-
17 PORTING.—Nothing in this paragraph shall be
18 construed as prohibiting or limiting the use of
19 health care information of an individual, includ-
20 ing an individual who is an IHRT participant,
21 for public health reporting (or other research)
22 purposes prior to the inclusion of such informa-
23 tion in an electronic health record maintained
24 by an IHRT.

1 (4) LAW ENFORCEMENT CLARIFICATION.—

2 Nothing in this part shall prevent an IHRT from
3 disclosing information contained in an electronic
4 health record maintained by the IHRT when re-
5 quired for purposes of a lawful investigation or offi-
6 cial proceeding inquiring into a violation of, or fail-
7 ure to comply with, any criminal or civil statute or
8 any regulation, rule, or order issued pursuant to
9 such a statute.

10 (5) RULE OF CONSTRUCTION.—Nothing in this

11 section shall be construed to require a health care
12 provider that does not utilize electronic methods or
13 appropriate levels of health information technology
14 on the date of the enactment of this Act to adopt
15 such electronic methods or technology as a require-
16 ment for participation or compliance under this part.

17 (b) PRIVACY PROTECTION AGREEMENT; TREATMENT
18 OF STATE PRIVACY AND SECURITY LAWS.—

19 (1) PRIVACY PROTECTION AGREEMENT.—A pri-

20 vacy protection agreement described in this sub-
21 section is an agreement, with respect to an electronic
22 health record of an IHRT participant to be main-
23 tained by an independent health record trust, be-
24 tween the participant and the trust—

1 (A) that is consistent with the standards
2 described in subsection (a)(2);

3 (B) under which the participant specifies
4 the portions of the record that may be accessed,
5 under what circumstances such portions may be
6 accessed, any authorizations for indicated au-
7 thorized EHR data users to access information
8 contained in the record, and the purposes for
9 which the information (or portions of the infor-
10 mation) in the record may be used;

11 (C) which provides a process for the au-
12 thorization of the transfer of information con-
13 tained in the record to a third party, including
14 for the sale of such information for purposes of
15 research, by an authorized EHR data user and
16 reuse of such information by such third party,
17 including a provision requiring that such trans-
18 fer and reuse is not in violation of any privacy
19 or transfer restrictions placed by the partici-
20 pant on the independent health record of such
21 participant; and

22 (D) under which the trust provides assur-
23 ances that the trust will not transfer, disclose,
24 or provide access to the record (or any portion
25 of the record) in violation of the parameters es-

1 tablished in the agreement or to any person or
2 entity who has not agreed to use and transfer
3 such record (or portion of such record) in ac-
4 cordance with such agreement.

5 (2) TREATMENT OF STATE LAWS.—

6 (A) IN GENERAL.—Except as provided
7 under subparagraph (B), the provisions of a
8 privacy protection agreement entered into be-
9 tween an IHRT and an IHRT participant shall
10 preempt any provision of State law (or any
11 State regulation) relating to the privacy and
12 confidentiality of individually identifiable health
13 information or to the security of such health in-
14 formation.

15 (B) EXCEPTION FOR PRIVILEGED INFOR-
16 MATION.—The provisions of a privacy protec-
17 tion agreement shall not preempt any provision
18 of State law (or any State regulation) that rec-
19 ognizes privileged communications between phy-
20 sicians, health care practitioners, and patients
21 of such physicians or health care practitioners,
22 respectively.

23 (C) STATE DEFINED.—For purposes of
24 this section, the term “State” has the meaning
25 given such term when used in title XI of the

1 Social Security Act, as provided under section
2 1101(a) of such Act (42 U.S.C. 1301(a)).

3 **SEC. 167. VOLUNTARY NATURE OF TRUST PARTICIPATION**
4 **AND INFORMATION SHARING.**

5 (a) IN GENERAL.—Participation in an independent
6 health record trust, or authorizing access to information
7 from such a trust, is voluntary. No employer, health insur-
8 ance issuer, group health plan, health care provider, or
9 other person may require, as a condition of employment,
10 issuance of a health insurance policy, coverage under a
11 group health plan, the provision of health care services,
12 payment for such services, or otherwise, that an individual
13 participate in, or authorize access to information from, an
14 independent health record trust.

15 (b) ENFORCEMENT.—The penalties provided for in
16 subsection (a) of section 1177 of the Social Security Act
17 (42 U.S.C. 1320d–6) shall apply to a violation of sub-
18 section (a) in the same manner as such penalties apply
19 to a person in violation of subsection (a) of such section.

20 **SEC. 168. FINANCING OF ACTIVITIES.**

21 (a) IN GENERAL.—Except as provided in subsection
22 (b), an IHRT may generate revenue to pay for the oper-
23 ations of the IHRT through—

24 (1) charging IHRT participants account fees
25 for use of the trust;

(2) charging authorized EHR data users for accessing electronic health records maintained in the trust;

(3) the sale of information contained in the trust (as provided for in section 166(a)(3)(A)); and

(4) any other activity determined appropriate by the Federal Trade Commission.

(b) PROHIBITION AGAINST ACCESS FEES FOR HEALTH CARE PROVIDERS.—For purposes of providing incentives to health care providers to access information maintained in an IHRT, as authorized by the IHRT participants involved, the IHRT may not charge a fee for services specified by the IHRT. Such services shall include the transmittal of information from a health care provider to be included in an independent electronic health record maintained by the IHRT (or permitting such provider to input such information into the record), including the transmission of or access to information described in section 166(a)(2)(C)(ii) by appropriate emergency responders.

(c) REQUIRED DISCLOSURES.—The sources and amounts of revenue derived under subsection (a) for the operations of an IHRT shall be fully disclosed to each IHRT participant of such IHRT and to the public.

1 (d) TREATMENT OF INCOME.—For purposes of the
2 Internal Revenue Code of 1986, any revenue described in
3 subsection (a) shall not be included in gross income of any
4 IHRT, IHRT participant, or authorized EHR data user.

5 **SEC. 169. REGULATORY OVERSIGHT.**

6 (a) IN GENERAL.—In carrying out this part, the Fed-
7 eral Trade Commission shall promulgate regulations for
8 independent health record trusts.

9 (b) ESTABLISHMENT OF INTERAGENCY STEERING
10 COMMITTEE.—

11 (1) IN GENERAL.—The Secretary of Health and
12 Human Services shall establish an Interagency
13 Steering Committee in accordance with this sub-
14 section.

15 (2) CHAIRPERSON.—The Secretary of Health
16 and Human Services shall serve as the chairperson
17 of the Interagency Steering Committee.

18 (3) MEMBERSHIP.—The members of the Inter-
19 agency Steering Committee shall consist of the At-
20 torney General, the Chairperson of the Federal
21 Trade Commission, the Chairperson for the National
22 Committee for Vital and Health Statistics, a rep-
23 resentative of the Federal Reserve, and other Fed-
24 eral officials determined appropriate by the Sec-
25 retary of Health and Human Services.

1 (4) DUTIES.—The Interagency Steering Com-
2 mittee shall coordinate the implementation of this
3 part, including the implementation of policies de-
4 scribed in subsection (d) based upon the rec-
5 ommendations provided under such subsection, and
6 regulations promulgated under this part.

7 (c) FEDERAL ADVISORY COMMITTEE.—

8 (1) IN GENERAL.—The National Committee for
9 Vital and Health Statistics shall serve as an advisory
10 committee for the IHRTs. The membership of such
11 advisory committee shall include a representative
12 from the Federal Trade Commission and the chair-
13 person of the Interagency Steering Committee. Not
14 less than 60 percent of such membership shall con-
15 sist of representatives of nongovernment entities, at
16 least one of whom shall be a representative from an
17 organization representing health care consumers.

18 (2) DUTIES.—The National Committee for
19 Vital and Health Statistics shall issue periodic re-
20 ports and review policies concerning IHRTs based
21 on each of the following factors:

22 (A) Privacy and security policies.

23 (B) Economic progress.

24 (C) Interoperability standards.

1 (d) POLICIES RECOMMENDED BY FEDERAL TRADE
2 COMMISSION.—The Federal Trade Commission, in con-
3 sultation with the National Committee for Vital and
4 Health Statistics, shall recommend policies to—

5 (1) provide assistance to encourage the growth
6 of independent health record trusts;

7 (2) track economic progress as it pertains to
8 operators of independent health records trusts and
9 individuals receiving nontaxable income with respect
10 to accounts;

11 (3) conduct public education activities regarding
12 the creation and usage of the independent health
13 records trusts;

14 (4) establish standards for the interoperability
15 of health information technology to ensure that in-
16 formation contained in such record may be shared
17 between the trust involved, the participant, and au-
18 thorized EHR data users, including for the stand-
19 ardized collection and transmission of individual
20 health records (or portions of such records) to au-
21 thorized EHR data users through a common inter-
22 face and for the portability of such records among
23 independent health record trusts; and

24 (5) carry out any other activities determined
25 appropriate by the Federal Trade Commission.

1 (e) REGULATIONS PROMULGATED BY FEDERAL
2 TRADE COMMISSION.—The Federal Trade Commission
3 shall promulgate regulations based on, at a minimum, the
4 following factors:

5 (1) Requiring that an IHRT participant, who
6 has an electronic health record that is maintained by
7 an IHRT, be notified of a security breach with re-
8 spect to such record, and any corrective action taken
9 on behalf of the participant.

10 (2) Requiring that information sent to, or re-
11 ceived from, an IHRT that has been designated as
12 high-risk should be authenticated through the use of
13 methods such as the periodic changing of passwords,
14 the use of biometrics, the use of tokens or other
15 technology as determined appropriate by the council.

16 (3) Requiring a delay in releasing sensitive
17 health care test results and other similar informa-
18 tion to patients directly in order to give physicians
19 time to contact the patient.

20 (4) Recommendations for entities operating
21 IHRTs, including requiring analysis of the potential
22 risk of health transaction security breaches based on
23 set criteria.

1 (5) The conduct of audits of IHRTs to ensure
2 that they are in compliance with the requirements
3 and standards established under this part.

4 (6) Disclosure to IHRT participants of the
5 means by which such trusts are financed, including
6 revenue from the sale of patient data.

7 (7) Prevention of certification of an entity seek-
8 ing independent health record trust certification
9 based on—

10 (A) the potential for conflicts between the
11 interests of such entity and the security of the
12 health information involved; and

13 (B) the involvement of the entity in any
14 activity that is contrary to the best interests of
15 a patient.

16 (8) Prevention of the use of revenue sources
17 that are contrary to a patient's interests.

18 (9) Public disclosure of audits in a manner
19 similar to financial audits required for publicly trad-
20 ed stock companies.

21 (10) Requiring notification to a participating
22 entity that the information contained in such record
23 may not be representative of the complete or accu-
24 rate electronic health record of such account holder.

1 (f) COMPLIANCE REPORT.—Not later than 1 year
2 after the date of the enactment of this Act, and annually
3 thereafter, the Commission shall submit to the Committee
4 on Health, Education, Labor, and Pensions and the Com-
5 mittee on Finance of the Senate and the Committee on
6 Energy and Commerce and the Committee on Ways and
7 Means of the House of Representatives, a report on com-
8 pliance by and progress of independent health record
9 trusts with this part. Such report shall describe the fol-
10 lowing:

11 (1) The number of complaints submitted about
12 independent health record trusts, which shall be di-
13 vided by complaints related to security breaches, and
14 complaints not related to security breaches, and may
15 include other categories as the Interagency Steering
16 Committee established under subsection (b) deter-
17 mines appropriate.

18 (2) The number of enforcement actions under-
19 taken by the Commission against independent health
20 record trusts in response to complaints under para-
21 graph (1), which shall be divided by enforcement ac-
22 tions related to security breaches and enforcement
23 actions not related to security breaches and may in-
24 clude other categories as the Interagency Steering

1 Committee established under subsection (b) deter-
2 mines appropriate.

3 (3) The economic progress of the individual
4 owner or institution operator as achieved through
5 independent health record trust usage and existing
6 barriers to such usage.

7 (4) The progress in security auditing as pro-
8 vided for by the Interagency Steering Committee
9 council under subsection (b).

10 (5) The other core responsibilities of the Com-
11 mission as described in subsection (a).

12 (g) INTERAGENCY MEMORANDUM OF UNDER-
13 STANDING.—The Interagency Steering Committee shall
14 ensure, through the execution of an interagency memo-
15 randum of understanding, that—

16 (1) regulations, rulings, and interpretations
17 issued by Federal officials relating to the same mat-
18 ter over which 2 or more such officials have respon-
19 sibility under this part are administered so as to
20 have the same effect at all times; and

21 (2) the memorandum provides for the coordina-
22 tion of policies related to enforcing the same require-
23 ments through such officials in order to have coordi-
24 nated enforcement strategy that avoids duplication

of enforcement efforts and assigns priorities in enforcement.

TITLE II—MEDICAID AND SCHIP REFORM

SEC. 201. MEDICAID REFORM.

(a) IN GENERAL.—Title XIX of the Social Security Act is amended—

(1) by redesignating section 1939 as section 1940; and

(2) by inserting after section 1938 the following new section:

“REVISION OF MEDICAID PROGRAM

“SEC. 1939. (a) ELECTION OF BLOCK GRANT OR IMPLEMENTATION OF REFUNDABLE TAX CREDIT FOR MEDICAID POPULATION FOR ACUTE CARE SERVICES AND MAINTENANCE OF EFFORT SPENDING.—

“(1) IN GENERAL.—Each State shall elect—

“(A) to receive block grant funding under subsection (b); or

“(B) to have Medicaid-eligible individuals eligible to receive refundable tax credits under section 36 of the Internal Revenue Code of 1986 and to provide for maintenance of effort described in subsection (c).

1 If a State fails to make such an election, the State
2 shall be treated as making the election described in
3 subparagraph (A).

4 “(2) LIMITATIONS ON ELECTION.—If a State
5 makes the election described in paragraph (1)(B),
6 the State may not change such election. A State that
7 makes the election described in paragraph (1)(A)
8 may change such election with notice to the Sec-
9 retary.

10 “(3) EFFECTIVE DATE; IMPLEMENTATION.—
11 This subsection shall first take effect as of January
12 1, 2010. For items and services furnished on or
13 after such date, no payment shall be made under
14 section 1903 to any State.

15 “(b) BLOCK GRANT PAYMENT FOR ACUTE CARE
16 SERVICES.—

17 “(1) IN GENERAL.—The block grant payment
18 amount under this subsection for a State—

19 “(A) for 2010 is equal to the total Federal
20 payments under this title and title XXI to the
21 State for calendar quarters in 2009 (other than
22 payments for medical assistance for long-term
23 care services, as defined for purposes of sub-
24 section (e))), increased by the inflation adjust-

1 ment factor for the year (described in para-
2 graph (2)); or

3 “(B) for a subsequent year is, subject to
4 subsection (d), equal to the block grant pay-
5 ment amount under this subsection for the
6 State for the previous year increased by the in-
7 flation adjustment factor for the year (described
8 in paragraph (2)) and a population growth fac-
9 tor (described in paragraph (3)).

10 “(2) INFLATION ADJUSTMENT FACTOR.—The
11 inflation adjustment factor in this paragraph for a
12 year is equal to the average of the projected annual
13 rate of increase in the consumer price index for
14 urban consumers (all items; U.S. city average) and
15 the percentage increase in the MEI (as defined in
16 section 1842(i)(3)) for the year.

17 “(3) POPULATION GROWTH FACTOR.—The Sec-
18 retary shall determine and apply a population
19 growth factor based on the percentage increase in
20 the population included in the computation of Na-
21 tional Health Expenditures from the calendar year
22 in which the previous fiscal year ends to the cal-
23 endar year in which the fiscal year involved ends, as
24 most recently published by the Secretary, but ad-
25 justed among the States so as to reflect differences

1 in relative population growth rates among such
2 States.

3 “(4) LIMITATION.—Payment under this sub-
4 section shall only be available to States for costs of
5 health care and related administrative costs.

6 “(5) NO REQUIREMENT FOR STATE MATCHING
7 PAYMENT.—Nothing in this subsection shall be con-
8 strued as requiring a State to make any matching
9 payments as a condition of receiving payment under
10 this subsection.

11 “(6) PERIODICITY OF PAYMENTS.—The Sec-
12 retary shall provide for making payments under this
13 subsection on a quarterly or other appropriate basis.

14 “(c) MAINTENANCE OF EFFORT (MOE) REQUIRE-
15 MENT.—

16 “(1) IN GENERAL.—The maintenance of effort
17 requirement under this subsection for a State for a
18 year is to provide for payment in the MOE amount
19 specified in paragraph (2) for the year for purposes
20 described in, and in accordance with, paragraph (3).

21 “(2) MOE AMOUNT.—The MOE amount speci-
22 fied in this paragraph for a State—

23 “(A) for 2010 is equal to the amount of
24 expenditures of the State under this title and
25 title XXI for calendar quarters in 2008, not

1 taking into account Federal payments made to
2 the State under the respective title and not tak-
3 ing into account such payments that are attrib-
4 utable to medical assistance for long-term care
5 services (as defined for purposes of subsection
6 (e)), increased by the inflation adjustment fac-
7 tor described in subsection (b)(2) for 2009 and
8 further increased by such factor for 2010; or

9 “(B) for a subsequent year is equal to the
10 MOE amount specified in this paragraph for
11 the State for the previous year increased by the
12 inflation adjustment factor described in sub-
13 section (b)(2) for such subsequent year.

14 “(3) APPLICATION TOWARD SPENDING.—Pay-
15 ments by a State shall be used for the following pur-
16 poses, with priority given to such purposes in the
17 following order:

18 “(A) To develop an auto-enrollment pro-
19 gram for previously eligible Medicaid recipients.

20 “(B) To assist individuals in low-income
21 families (as defined by the State) and high-cost
22 individuals and families (for those for whom in-
23 surance is unavailable or very expensive because
24 of their health status) to purchase qualifying
25 health insurance. Eligible expenses shall include

1 direct assistance with premiums and cost-shar-
2 ing.

3 “(C) For purposes of funding qualified
4 high risk pools (as defined in section 2744(c)(2)
5 of the Public Health Service Act).

6 “(D) For establishment and funding of re-
7 insurance mechanisms.

8 “(E) For establishment and maintenance
9 of networks designed to improve consumer in-
10 formation, transparency in price and quality
11 data, and reduction in transaction costs associ-
12 ated with enrolling individuals in health insur-
13 ance coverage.

14 “(d) PHASE-OUT OF DSH PAYMENTS.—

15 “(1) IN GENERAL.—Notwithstanding any other
16 provision of law, the amount of DSH allotment oth-
17 erwise provided under section 1923(f) for each State
18 for a fiscal year shall be reduced—

19 “(A) by 25 percent for fiscal year 2010;

20 “(B) by 50 percent for fiscal year 2011;

21 “(C) by 75 percent for fiscal year 2012;

22 and

23 “(D) entirely for fiscal year 2013 and each
24 succeeding fiscal year.

“(2) ADJUSTMENT IN BLOCK GRANT.—The amount of any block grant for a State under subsection (b) for a fiscal year shall be adjusted to reflect the amount of reductions in DSH allotment under paragraph (1) for the State and the fiscal year.

“(e) BLOCK GRANT FOR LONG-TERM CARE SERVICES.—

“(1) IN GENERAL.—Notwithstanding any other provision of this title, instead of any payment under this title to a State for long-term care services (as defined by the Secretary), the Secretary shall pay to a State the long-term care block grant amount specified in paragraph (2).

“(2) LONG-TERM CARE BLOCK GRANT AMOUNT.—The long-term block grant payment amount under this paragraph for a State—

“(A) for 2010 is equal to the total Federal payments under this title to the State for calendar quarters in 2009 for long-term care services, as defined for purposes of paragraph (1), increased by the inflation adjustment factor for the year (described in subsection (b)(2))); or

“(B) for a subsequent year is equal to the long-term care block grant payment amount

1 under this paragraph for the State for the pre-
 2 vious year increased by such inflation adjust-
 3 ment factor for the year.

4 “(3) APPLICATION OF PROVISIONS.—The provi-
 5 sions of paragraphs (3), (4), and (5) of subsection
 6 (b) shall apply to payments under this subsection.

7 “(4) EFFECTIVE DATE; IMPLEMENTATION.—
 8 This subsection shall first take effect as of January
 9 1, 2010. For long-term care items and services fur-
 10 nished on or after such date, no payment shall be
 11 made under section 1903 to any State.”.

12 **SEC. 202. SCHIP REFORM.**

13 (a) IN GENERAL.—Effective for items and services
 14 furnished on or after January 1, 2010, title XXI of the
 15 Social Security Act is repealed.

16 (b) CONSTRUCTION.—Subsection (a) shall not affect
 17 payment for items and services furnished before such date.

18 **TITLE III—MEDICARE REFORM**
 19 **Subtitle A—New Medicare Program**

20 **SEC. 301. BENEFIT CHANGES.**

21 Title XVIII of the Social Security Act is amended by
 22 inserting after section 1808 the following new section:

23 “PROGRAM FOR NEW MEDICARE BENEFICIARIES

24 BEGINNING IN 2019

25 “SEC. 1809. (a) APPLICATION.—

1 “(1) IN GENERAL.—Notwithstanding any other
2 provision of law (including sections 226 and 226A),
3 the provisions of this section shall apply to individ-
4 uals (other than individuals entitled to benefits only
5 because of the application of section 1881(d)) who
6 first become entitled to benefits under part A, or
7 whose coverage period under part B begins, on or
8 after January 1, 2019.

9 “(2) NO IMPACT ON FICA/SECA TAX REVE-
10 NUES.—Nothing in this section shall be construed as
11 affecting revenues through the payment of hospital
12 insurance taxes under sections 1401(b), 3101(b),
13 and 3111(b) of the Internal Revenue Code of 1986.

14 “(3) NO IMPACT ON OTHER BENEFICIARIES.—

15 “(A) IN GENERAL.—This section shall not
16 apply to individuals not described in paragraph
17 (1).

18 “(B) NO IMPACT ON COMPUTATION OF
19 MEDICARE PREMIUMS FOR OLDER MEDICARE
20 BENEFICIARIES.—Premiums under parts A, B,
21 and D shall be computed for individuals not de-
22 scribed in paragraph (1) based on the average
23 costs that the Secretary estimates would have
24 been applicable if this section did not apply.

25 “(b) ALTERNATIVE BENEFITS.—

1 “(1) IN GENERAL.—An individual described in
2 subsection (a)(1) is only entitled to benefits under
3 this title in accordance with this section. In the case
4 of such an individual who has qualified health insur-
5 ance coverage, the individual is entitled under this
6 section—

7 “(A) to an income-related payment under
8 subsection (c); and

9 “(B) in the case of a low-income individual
10 (as defined in paragraph (3) of subsection (d)),
11 to a contribution to a medical savings account
12 of the individual in the amount specified in
13 such subsection.

14 “(2) ALTERNATIVE PREMIUM OBLIGATIONS.—
15 An individual described in subsection (a)(1)—

16 “(A) is not responsible for payment of any
17 premium otherwise applicable under part B or
18 D; but

19 “(B) is responsible for payment of the pre-
20 mium for qualified health insurance coverage
21 referred to in paragraph (1) and may apply the
22 income-related payment under subsection (c) to-
23 ward such premium.

24 “(3) QUALIFIED HEALTH INSURANCE COV-
25 ERAGE DEFINED.—In this subsection, the term

1 ‘qualified health insurance coverage’ means health
2 benefits coverage, whether under a group health
3 plan, health insurance coverage or otherwise, but
4 does not include coverage under a health plan if sub-
5 stantially all of its coverage is coverage described in
6 section 223(c)(1)(B) of the Internal Revenue Code
7 of 1986.

8 “(c) INCOME-RELATED PAYMENT.—

9 “(1) IN GENERAL.—The amount of the income-
10 related payment under this subsection for an indi-
11 vidual for a year is equal to—

12 “(A) the annual amount specified for the
13 year in paragraph (2);

14 “(B) subject to reduction under paragraph
15 (3) (relating to higher income individuals);

16 “(C) further subject to adjustment under
17 paragraph (4); and

18 “(D) subject to pro-ration under para-
19 graph (5).

20 “(2) ANNUAL AMOUNT.—

21 “(A) IN GENERAL.—The annual amount
22 specified in this paragraph—

23 “(i) for 2009 is \$9,500; and

24 “(ii) for any subsequent year is the
25 annual amount specified in this paragraph

1 for the preceding year increased by the an-
2 nual inflation adjustment described in sub-
3 paragraph (B) for such subsequent year.

4 Any amount computed under clause (ii) that is
5 not a multiple of \$12 shall be rounded to the
6 nearest multiple of \$12.

7 “(B) ANNUAL INFLATION ADJUSTMENT.—

8 The annual inflation adjustment under this
9 subparagraph for a year is equal to the average
10 of—

11 “(i) the annual rate of increase in the
12 consumer price index for urban consumers
13 (all items; U.S. city average) for the year,
14 as projected by the Secretary in consulta-
15 tion with the Bureau of Labor Statistics
16 before the beginning of the year; and

17 “(ii) the annual rate of increase in the
18 medical care component of the consumer
19 price index for all urban consumers (U.S.
20 city average) for the year, as projected by
21 the Secretary in consultation with the Bu-
22 reau of Labor Statistics before the begin-
23 ning of the year.

24 “(3) REDUCTION FOR HIGHER-INCOME INDIVID-
25 UALS.—

1 “(A) IN GENERAL.—In the case of an indi-
2 vidual whose modified adjusted gross income
3 exceeds the threshold amount specified in para-
4 graph (2) of section 1839(i), as adjusted under
5 paragraph (5) of such section, the annual
6 amount under paragraph (2) shall be reduced
7 by the adjustment percentage specified in sub-
8 paragraph (B).

9 “(B) ADJUSTMENT PERCENTAGE.—In the
10 case of an individual for whom the applicable
11 percentage specified in section 1839(i)(3)(C)—

12 “(i) is less than 80 percent, the ad-
13 justment percentage under this subpara-
14 graph shall be 50 percent; or

15 “(ii) is equal to 80 percent, the ad-
16 justment percentage under this subpara-
17 graph shall be 70 percent.

18 “(C) APPLICATION OF CERTAIN PROVI-
19 SIONS.—The provisions of paragraphs (4)
20 through (6) of section 1839(i) shall apply under
21 this paragraph in the same manner as they
22 apply for purposes of such section.

23 “(4) RISK, GEOGRAPHIC AREA, AND OTHER AD-
24 JUSTMENTS.—

1 “(A) RISK ADJUSTMENT.—The payment
2 amount under this subsection for an individual
3 shall be adjusted, using a methodology specified
4 by the Secretary, in a manner that takes into
5 account the relative risk factors (such as those
6 described in section 1853(a)(1)(C)(i)) associ-
7 ated with such individual. Such adjustment
8 shall be made in such a manner as not to
9 change the total amount of payments made
10 under this subsection as a result of such adjust-
11 ment.

12 “(B) PARTIAL GEOGRAPHIC AREA ADJUST-
13 MENT.—Such payment amount for an indi-
14 vidual also shall be adjusted, using a method-
15 ology specified by the Secretary, in a manner
16 that takes into account the relative differences
17 in area health care costs for the area in which
18 the individual resides compared to other areas.
19 Such adjustment shall be made in such a man-
20 ner as not to change the total amount of pay-
21 ments made under this subsection as a result of
22 such adjustment. The Secretary shall provide
23 for a decrease over time in the adjustment
24 made under this subparagraph.

“(C) CERTAIN PART A BUY-IN INDIVIDUALS.—Such payment amount for an individual who is not eligible for benefits under part A pursuant to section 226 or 226A shall be adjusted by such proportion or amount as the Secretary determines appropriate to take into account premiums that would otherwise be payable under section 1818 or 1818A for benefits under part A.

“(5) PRO-RATIO FOR PARTIAL YEAR OF ELIGIBILITY.—In the case of an individual whose entitlement under this section is for less than an entire year, the payment amount under this subsection shall be pro-rated to reflect the portion of the year included in such entitlement.

“(6) PAYMENT ON PERIODIC BASIS.—The Secretary shall provide for the payment under this subsection on an appropriate monthly or other periodic basis.

“(d) CONTRIBUTION TO A MEDICAL SAVINGS ACCOUNT (MSA) FOR LOW-INCOME INDIVIDUALS.—

“(1) IN GENERAL.—The amount of the contribution under subsection (b)(1)(B) to a medical savings account of a low-income individual is equal—

1 “(A) in the case of an individual described
2 in clause (i) or (ii) of paragraph (4)(A), to the
3 full MSA contribution amount (as defined in
4 paragraph (2)); or

5 “(B) in the case of any other individual, to
6 75 percent of the full MSA contribution
7 amount.

8 “(2) FULL MSA CONTRIBUTION AMOUNT.—For
9 purposes of this subsection, the term ‘full MSA con-
10 tribution amount’ means, for a year for an indi-
11 vidual, an amount to be equivalent to the full
12 amount of the average deductible of a high-deduct-
13 ible health plan (as defined in section 223(c)(2) of
14 the Internal Revenue Code of 1986) as determined
15 by the Secretary.

16 “(3) NO MEDICAID COVERAGE FOR MEDICARE-
17 COVERED SERVICES.—

18 “(A) IN GENERAL.—In the case of an indi-
19 vidual who is eligible to be provided a contribu-
20 tion to a medical savings account under this
21 subsection, the individual is not entitled to any
22 payment under a State plan under title XIX
23 with respect to any benefits relating to items
24 and services for which coverage is provided
25 under this title.

“(B) CONSTRUCTION.—Subparagraph (A) shall not affect the continued provision of medical assistance under title XIX for items and services, such as dental, vision, or long-term care facility services, for which benefits are not provided under this title regardless of medical necessity.

“(4) PERIODIC PAYMENT.—The Secretary shall provide for the contribution into medical savings accounts of amounts under this subsection on an appropriate monthly or other periodic basis.

“(5) LOW-INCOME INDIVIDUAL DEFINED.—

“(A) IN GENERAL.—For purposes of this section, the term ‘low-income individual’ means an individual described in subsection (a)(1)—

“(i) who meets the requirement of section 1936(c)(6)(A)(ii) (relating to a full-benefit dual eligible individual);

“(ii) whose income (as determined under section 1612 for purposes of the supplemental security income program, except as provided in subparagraph (B)) does not exceed 100 percent of the official income poverty line (referred to in section

1 1905(p)(1)) applicable to a family of the
2 size involved; or

3 “(iii) whose income (as so determined)
4 exceeds 100 percent, but does not exceed
5 150 percent, of such official income pov-
6 erty line applicable to a family of the size
7 involved.

8 “(B) APPLICATION OF SPECIAL RULE RE-
9 GARDING APPLICATION OF SOCIAL SECURITY IN-
10 CREASES.—The provisions of subparagraph (D)
11 of section 1905(p)(2) shall apply to determina-
12 tions of income under subparagraph (A) in the
13 same manner they apply under such section.

14 “(C) DETERMINATION PROCESS.—The
15 Secretary shall specify a process for the deter-
16 mination of whether individuals are low-income
17 individuals.”.

18 **SEC. 302. INCREASE IN MEDICARE ELIGIBILITY AGE.**

19 Section 226 of the Social Security Act (42 U.S.C.
20 426) is amended by adding at the end the following new
21 subsection:

22 “(k) INCREASING MEDICARE QUALIFYING AGE.—

23 “(1) IN GENERAL.—Notwithstanding any other
24 provision of law, any reference in this section or title
25 XVIII (or title XIX insofar as it refers to title

XVIII) to ‘age 65’ shall be deemed a reference to the medicare qualifying age specified in paragraph (2).

“(2) MEDICARE QUALIFYING AGE SPECIFIED.—

The medicare qualifying age specified in this paragraph is determined as follows:

“(A) In the case of an individual who attains 65 years of age before January 1, 2019, the medicare qualifying age is 65 years of age.

“(B) In the case of an individual who attains 65 years of age in a year after 2018 and before 2027, the medicare qualifying age is the medicare qualifying age specified in this paragraph for the previous year increased by 2 months.

“(C) In the case of an individual who attains 65 years of age—

“(i) in the 2-year period beginning on January 1, 2027, the medicare qualifying age is 67 years and 1 month; or

“(ii) in a subsequent 2-year period beginning before 2087, the medicare qualifying age is the medicare qualifying age specified in this paragraph for the previous 2-year period (or, in the case of the first

1 2-year period, specified for 2026) increased
2 by 1 month.

3 “(D) In the case of an individual who at-
4 tains 65 years of age on or after January 1,
5 2086, the medicare qualifying age is the medi-
6 care qualifying age specified in this paragraph
7 is 69 years and 6 months.”.

8 **SEC. 303. UNIFIED MEDICARE TRUST FUND.**

9 (a) IN GENERAL.—The Federal Hospital Insurance
10 Trust Fund (established under section 1817 of the Social
11 Security Act) and the Federal Supplementary Medical In-
12 surance Trust Fund (established under section 1841 of
13 such Act) are hereby consolidated into a unified Medicare
14 trust fund. Such trust fund shall have separate accounts
15 for parts A, B, and D of such title and shall be adminis-
16 tered by the same board of trustees that administers the
17 current Trust Funds.

18 (b) CONSTRUCTION.—Nothing in this section shall be
19 construed as affecting the actual transfer of funds or com-
20 putations of amounts of premiums under any part of the
21 Medicare program.

22 (c) SOLVENCY.—The Medicare trustee shall establish
23 a measure of program solvency for the Medicare program
24 of total outlays as a measure of gross domestic product.

Subtitle B—Changes in Current Medicare Program

SEC. 311. INCOME-RELATED REDUCTION IN PART D PREMIUM SUBSIDY.

(a) INCOME-RELATED REDUCTION IN PART D PREMIUM SUBSIDY.—

(1) IN GENERAL.—Section 1860D–13(a) of the Social Security Act (42 U.S.C. 1395w–113(a)) is amended by adding at the end the following new paragraph:

“(7) REDUCTION IN PREMIUM SUBSIDY BASED ON INCOME.—

“(A) IN GENERAL.—In the case of an individual whose modified adjusted gross income exceeds the threshold amount applicable under paragraph (2) of section 1839(i) (including application of paragraph (5) of such section) for the calendar year, the monthly amount of the premium subsidy applicable to the premium under this section for a month after December 2009 shall be reduced (and the monthly beneficiary premium shall be increased) by the monthly adjustment amount specified in subparagraph (B).

1 “(B) MONTHLY ADJUSTMENT AMOUNT.—

2 The monthly adjustment amount specified in
3 this subparagraph for an individual for a month
4 in a year is equal to the product of—

5 “(i) the quotient obtained by divid-
6 ing—

7 “(I) the applicable percentage de-
8 termined under paragraph (3)(C) of
9 section 1839(i) (including application
10 of paragraph (5) of such section) for
11 the individual for the calendar year
12 reduced by 25.5 percent; by

13 “(II) 25.5 percent; and

14 “(ii) the base beneficiary premium (as
15 computed under paragraph (2)).

16 “(C) MODIFIED ADJUSTED GROSS IN-
17 COME.—For purposes of this paragraph, the
18 term ‘modified adjusted gross income’ has the
19 meaning given such term in subparagraph (A)
20 of section 1839(i)(4), determined for the tax-
21 able year applicable under subparagraphs (B)
22 and (C) of such section.

23 “(D) DETERMINATION BY COMMISSIONER
24 OF SOCIAL SECURITY.—The Commissioner of
25 Social Security shall make any determination

1 necessary to carry out the income-related reduc-
2 tion in premium subsidy under this paragraph.

3 “(E) PROCEDURES TO ASSURE CORRECT
4 INCOME-RELATED REDUCTION IN PREMIUM
5 SUBSIDY.—

6 “(i) DISCLOSURE OF BASE BENE-
7 FICIARY PREMIUM.—Not later than Sep-
8 tember 15 of each year beginning with
9 2009, the Secretary shall disclose to the
10 Commissioner of Social Security the
11 amount of the base beneficiary premium
12 (as computed under paragraph (2)) for the
13 purpose of carrying out the income-related
14 reduction in premium subsidy under this
15 paragraph with respect to the following
16 year.

17 “(ii) ADDITIONAL DISCLOSURE.—Not
18 later than October 15 of each year begin-
19 ning with 2009, the Secretary shall dis-
20 close to the Commissioner of Social Secu-
21 rity the following information for the pur-
22 pose of carrying out the income-related re-
23 duction in premium subsidy under this
24 paragraph with respect to the following
25 year:

1 “(I) The modified adjusted gross
2 income threshold applicable under
3 paragraph (2) of section 1839(i) (in-
4 cluding application of paragraph (5)
5 of such section).

6 “(II) The applicable percentage
7 determined under paragraph (3)(C) of
8 section 1839(i) (including application
9 of paragraph (5) of such section).

10 “(III) The monthly adjustment
11 amount specified in subparagraph
12 (B).

13 “(IV) Any other information the
14 Commissioner of Social Security de-
15 termines necessary to carry out the
16 income-related reduction in premium
17 subsidy under this paragraph.

18 “(F) RULE OF CONSTRUCTION.—The for-
19 mula used to determine the monthly adjustment
20 amount specified under subparagraph (B) shall
21 only be used for the purpose of determining
22 such monthly adjustment amount under such
23 subparagraph.”.

1 (2) COLLECTION OF MONTHLY ADJUSTMENT
2 AMOUNT.—Section 1860D–13(c) of the Social Secu-
3 rity Act (42 U.S.C. 1395w–113(c)) is amended—

4 (A) in paragraph (1), by striking “(2) and
5 (3)” and inserting “(2), (3), and (4)”; and

6 (B) by adding at the end the following new
7 paragraph:

8 “(4) COLLECTION OF MONTHLY ADJUSTMENT
9 AMOUNT.—

10 “(A) IN GENERAL.—Notwithstanding any
11 other provision of this subsection or section
12 1854(d)(2), subject to subparagraph (B), the
13 amount of the income-related reduction in pre-
14 mium subsidy for an individual for a month (as
15 determined under subsection (a)(7)) shall be
16 paid through withholding from benefit pay-
17 ments in the manner provided under section
18 1840.

19 “(B) AGREEMENTS.—In the case where
20 the monthly benefit payments of an individual
21 that are withheld under subparagraph (A) are
22 insufficient to pay the amount described in such
23 subparagraph, the Commissioner of Social Se-
24 curity shall enter into agreements with the Sec-
25 retary, the Director of the Office of Personnel

1 Management, and the Railroad Retirement
2 Board as necessary in order to allow other
3 agencies to collect the amount described in sub-
4 paragraph (A) that was not withheld under
5 such subparagraph.”.

6 (b) CONFORMING AMENDMENTS.—

7 (1) MEDICARE.—Part D of title XVIII of the
8 Social Security Act (42 U.S.C. 1395w–101 et seq.)
9 is amended—

10 (A) in section 1860D–13(a)(1)—

11 (i) by redesignating subparagraph (F)
12 as subparagraph (G);

13 (ii) in subparagraph (G), as redesign-
14 nated by clause (i), by striking “(D) and
15 (E)” and inserting “(D), (E), and (F)”;
16 and

17 (iii) by inserting after subparagraph
18 (E) the following new subparagraph:

19 “(F) INCREASE BASED ON INCOME.—The
20 monthly beneficiary premium shall be increased
21 pursuant to paragraph (7).”; and

22 (B) in section 1860D–15(a)(1)(B), by
23 striking “paragraph (1)(B)” and inserting
24 “paragraphs (1)(B) and (1)(F)”.

(2) INTERNAL REVENUE CODE.—Section 6103(l)(20) of the Internal Revenue Code of 1986 (relating to disclosure of return information to carry out Medicare part B premium subsidy adjustment) is amended—

(A) in the heading, by striking “PART B PREMIUM SUBSIDY ADJUSTMENT” and inserting “PARTS B AND D PREMIUM SUBSIDY ADJUSTMENTS”;

(B) in subparagraph (A)—

(i) in the matter preceding clause (i), by inserting “or 1860D–13(a)(7)” after “1839(i)”; and

(ii) in clause (vii), by inserting after “subsection (i) of such section” the following: “or under section 1860D–13(a)(7) of such Act”; and

(C) in subparagraph (B)—

(i) by inserting “or such section 1860D–13(a)(7)” before the period at the end;

(ii) as amended by clause (i), by inserting “or for the purpose of resolving tax payer appeals with respect to any such pre-

1 mium adjustment” before the period at the
2 end; and

3 (iii) by adding at the end the fol-
4 lowing new sentence: “Officers, employees,
5 and contractors of the Social Security Ad-
6 ministration may disclose such return in-
7 formation to officers, employees, and con-
8 tractors of the Department of Health and
9 Human Services, the Office of Personnel
10 Management, the Railroad Retirement
11 Board, the Department of Justice, and the
12 courts of the United States to the extent
13 necessary to carry out the purposes de-
14 scribed in the preceding sentence.”; and

15 (D) by adding at the end the following new
16 subparagraph:

17 “(C) TIMING OF DISCLOSURE.—Return in-
18 formation shall be disclosed to officers, employ-
19 ees, and contractors of the Social Security Ad-
20 ministration under subparagraph (A) not later
21 than the date that is 90 days prior to the date
22 on which the taxpayer first becomes entitled to
23 benefits under part A of title XVIII of the So-
24 cial Security Act or eligible to enroll for benefits
25 under part B of such title.”.

1 **SEC. 312. REDUCTION IN HOSPITAL MARKETBASKET IN-**
2 **CREASES.**

3 Notwithstanding any other provision of law:

4 (1) **OUTPATIENT HOSPITAL SERVICES.**—For
5 2010 and each succeeding year, the OPD fee sched-
6 ule increase factor otherwise computed under section
7 1833(t)(3)(C)(iv) of the Social Security Act (42
8 U.S.C. 1395l(t)(3)(C)(iv)) shall be reduced by .4
9 percentage points.

10 (2) **INPATIENT HOSPITAL SERVICES.**—For fis-
11 cal year 2010 and each succeeding fiscal year, the
12 applicable percentage increase otherwise computed
13 under clauses (i) and (ii) of section 1886(b)(3)(B) of
14 such Act (42 U.S.C. 1395ww(b)(3)(B)) shall be re-
15 duced by .4 percentage points.

16 **SEC. 313. ELIMINATION OF INDEXING OF INCOME THRESH-**
17 **OLDS FOR PART B INCOME-RELATED PRE-**
18 **MIUMS.**

19 (a) **IN GENERAL.**—Section 1839(i) of the Social Se-
20 curity Act (42 U.S.C. 1395r(i)) is amended by striking
21 paragraph (5).

22 (b) **EFFECTIVE DATE.**—The amendment made by
23 subsection (a) shall apply to premiums for years beginning
24 with 2010.

1 **TITLE IV—SOCIAL SECURITY** 2 **REFORM**

3 **SEC. 401. SHORT TITLE AND TABLE OF CONTENTS OF** 4 **TITLE.**

5 (a) **SHORT TITLE OF TITLE.**—This title may be cited
 6 as the “Social Security Personal Savings Guarantee and
 7 Prosperity Act of 2008”.

8 (b) **TABLE OF CONTENTS OF TITLE.**—The table of
 9 contents for this title is as follows:

TITLE IV—SOCIAL SECURITY REFORM

Sec. 401. Short title and table of contents of title.

Sec. 402. Establishment of Personal Social Security Savings Program.

“PART B—PERSONAL SOCIAL SECURITY SAVINGS PROGRAM

“Sec. 251. Definitions.

“Sec. 252. Social Security Personal Savings Fund.

“Sec. 253. Participation in Program.

“Sec. 254. Personal social security savings accounts.

“Sec. 255. Tier I Investment Fund.

“Sec. 256. Tier II Investment Fund.

“Sec. 257. Tier III Investment Options.

“Sec. 258. Personal social security savings annuity and other distributions.

“Sec. 259. Guarantee of promised benefits.

“Sec. 260. Personal Social Security Savings Board.

“Sec. 261. Executive Director.

Sec. 403. Monthly insurance benefits for participating individuals.

Sec. 404. Tax treatment of accounts.

Sec. 405. Self-Liquidating Social Security Transition Fund.

Sec. 406. Budgetary treatment of social security.

Sec. 407. Accounting for the Old-Age, Survivors, and Disability Insurance Program and the Personal Social Security Savings Program.

Sec. 408. Progressive indexing of benefits for old-age, wife’s, and husband’s insurance benefits.

Sec. 409. Enhancements to part A benefits.

Sec. 410. Adjustments to schedule for increases in normal retirement age.

1 **SEC. 402. ESTABLISHMENT OF PERSONAL SOCIAL SECU-**
2 **RITY SAVINGS PROGRAM.**

3 (a) IN GENERAL.—Title II of the Social Security Act
4 is amended—

5 (1) by inserting before section 201 the fol-
6 lowing:

7 **“PART A—INSURANCE BENEFITS”;**

8 and

9 (2) by adding at the end the following new part:

10 **“PART B—PERSONAL SOCIAL SECURITY SAVINGS**
11 **PROGRAM**

12 **“SEC. 251. DEFINITIONS.**

13 “For purposes of this part—

14 “(1) PARTICIPATING INDIVIDUAL.—The term
15 ‘participating individual’ has the meaning provided
16 in section 253(a).

17 “(2) BOARD.—The term ‘Board’ means the
18 Personal Social Security Savings Board established
19 under section 260.

20 “(3) EXECUTIVE DIRECTOR.—The term ‘Execu-
21 tive Director’ means the Executive Director ap-
22 pointed under section 261.

23 “(4) PERSONAL SOCIAL SECURITY SAVINGS AC-
24 COUNT.—The term ‘personal social security savings
25 account’ means an account established under section
26 254(a).

1 “(5) PERSONAL SOCIAL SECURITY SAVINGS AN-
 2 NUITY.—The term ‘personal social security savings
 3 annuity’ means an annuity approved by the Board
 4 under section 258(b)(3).

5 “(6) SAVINGS FUND.—The term ‘Savings Fund’
 6 means the Social Security Personal Savings Fund
 7 established under section 252.

8 “(7) TIER I INVESTMENT FUND.—The term
 9 ‘Tier I Investment Fund’ means the trust fund cre-
 10 ated under section 255.

11 “(8) TIER II INVESTMENT FUND.—The term
 12 ‘Tier II Investment Fund’ means the trust fund cre-
 13 ated under section 256.

14 “(9) TIER III INVESTMENT OPTION.—The term
 15 ‘Tier III Investment Option’ means an investment
 16 option which is—

17 “(A) offered by an eligible entity certified
 18 by the Board under section 257(b); and

19 “(B) approved by the Board under section
 20 257(c).

21 **“SEC. 252. SOCIAL SECURITY PERSONAL SAVINGS FUND.**

22 “(a) ESTABLISHMENT OF SAVINGS FUND.—

23 “(1) ESTABLISHMENT.—There is established in
 24 the Treasury of the United States a trust fund to

1 be known as the 'Social Security Personal Savings
2 Fund'.

3 "(2) AMOUNTS IN FUND.—The Savings Fund
4 shall consist of—

5 "(A) all amounts transferred to or depos-
6 ited into the Savings Fund under subsection
7 (b), increased by the total net earnings from in-
8 vestments of sums in the Savings Fund attrib-
9 utable to such transferred or deposited
10 amounts, and reduced by the total net losses
11 from investments of such sums, and

12 "(B) the reserves held in the Annuity Re-
13 serves Account established under section
14 258(b)(3), increased by the total net earnings
15 from investments of such reserves, and reduced
16 by the total net losses from investments of such
17 reserves.

18 "(3) TRUSTEES.—The Board shall serve as
19 trustees of the Savings Fund.

20 "(4) BUDGET AUTHORITY; APPROPRIATION.—
21 This part constitutes budget authority in advance of
22 appropriations Acts and represents the obligation of
23 the Board to provide for the payment of amounts
24 provided under this part. The amounts held in the

1 Savings Fund are appropriated and shall remain
2 available without fiscal year limitation.

3 “(b) DEPOSITS INTO FUND.—

4 “(1) IN GENERAL.—During each calendar year,
5 the Secretary of the Treasury shall deposit into the
6 Savings Fund, from amounts held in the Federal
7 Old-Age and Survivors Insurance Trust Fund, a
8 total amount equal, in the aggregate, to 100 percent
9 of the redirected social security contribution for such
10 calendar year of each individual who is a partici-
11 pating individual for such calendar year.

12 “(2) TRANSFERS BASED ON ESTIMATES.—

13 “(A) IN GENERAL.—The amounts depos-
14 ited pursuant to paragraph (1) shall be trans-
15 ferred in at least weekly payments from the
16 Federal Old-Age and Survivors Insurance Trust
17 Fund to the Savings Fund.

18 “(B) DETERMINATION OF AMOUNTS.—The
19 amounts transferred under subparagraph (A)
20 shall be determined on the basis of estimates,
21 made by the Commissioner of Social Security
22 and certified to the Secretary of the Treasury,
23 of the wages paid to, and self-employment in-
24 come derived by, participating individuals.
25 Proper adjustments shall be made in amounts

1 subsequently transferred to the extent prior es-
2 timates were in excess of or were less than ac-
3 tual amounts transferred.

4 “(3) REDIRECTED SOCIAL SECURITY CONTRIBU-
5 TIONS.—For purposes of paragraph (1)—

6 “(A) IN GENERAL.—The term ‘redirected
7 social security contributions’ means, with re-
8 spect to an individual for a calendar year, the
9 sum of—

10 “(i) the product derived by multi-
11 plying—

12 “(I) the sum of the total wages
13 paid to, and self-employment income
14 derived by, such individual during
15 such calendar year, to the extent such
16 total wages and self-employment in-
17 come do not exceed the base amount
18 for such calendar year; by

19 “(II) the applicable base percent-
20 age for the calendar year; and

21 “(ii) the product derived by multi-
22 plying—

23 “(I) the sum of the total wages
24 paid to, and self-employment income
25 derived by, such individual during

1 such calendar year, to the extent such
2 total wages and self-employment in-
3 come exceed the base amount (taking
4 into account the limits imposed by the
5 contribution and benefit base under
6 section 230); by

7 “(II) the applicable supplemental
8 percentage for the calendar year.

9 “(B) BASE AMOUNT.—For purposes of
10 subparagraph (A)—

11 “(i) INITIAL BASE AMOUNT.—The
12 base amount for calendar year 2011 is
13 \$10,000.

14 “(ii) ADJUSTMENTS TO BASE
15 AMOUNT.—The base amount for any cal-
16 endar year after 2011 is the product de-
17 rived by multiplying \$10,000 by a frac-
18 tion—

19 “(I) the numerator of which is
20 the national average wage index (as
21 defined in section 209(k)) for the first
22 of the 2 preceding calendar years; and

23 “(II) the denominator of which is
24 the national average wage index (as so
25 defined) for 2009.

“(C) APPLICABLE BASE PERCENTAGE.—

For purposes of subparagraph (A), the applicable base percentage for a calendar year is—

“(i) for calendar years after 2010 and before 2021, 2 percent;

“(ii) for calendar years after 2020 and before 2031, 4 percent;

“(iii) for calendar years after 2030 and before 2041, 6 percent; and

“(iv) for calendar years after 2040, 8 percent.

“(D) APPLICABLE SUPPLEMENTAL PERCENTAGE.—For purposes of subparagraph (A), the applicable supplemental percentage for a calendar year is—

“(i) for calendar years after 2010 and before 2021, 1 percent;

“(ii) for calendar years after 2020 and before 2031, 2 percent;

“(iii) for calendar years after 2030 and before 2041, 3 percent; and

“(iv) for calendar years after 2040, 4 percent.

1 “(c) AVAILABILITY.—The sums in the Savings Fund
2 are appropriated and shall remain available without fiscal
3 year limitation—

4 “(1) to invest funds in the Tier I Investment
5 Fund of the Savings Fund and the Tier II Invest-
6 ment Fund of the Savings Fund under sections 255
7 and 256, respectively;

8 “(2) to transfer into Tier III Investment Op-
9 tions under section 257;

10 “(3) to make distributions in accordance with
11 section 258; and

12 “(4) to pay the administrative expenses of the
13 Board in accordance with subsection (e).

14 “(d) LIMITATIONS ON USE OF FUNDS.—

15 “(1) IN GENERAL.—Sums in the Savings Fund
16 credited to a participating individual’s personal so-
17 cial security savings account may not be used for, or
18 diverted to, purposes other than for the exclusive
19 benefit of the participating individual or the partici-
20 pating individual’s beneficiaries under this part.

21 “(2) ASSIGNMENTS.—Sums in the Savings
22 Fund may not be assigned or alienated and are not
23 subject to execution, levy, attachment, garnishment,
24 or other legal process.

1 “(e) PAYMENT OF ADMINISTRATIVE EXPENSES.—

2 Administrative expenses incurred to carry out this part
3 shall be paid out of net earnings in the Savings Fund in
4 conjunction with the allocation of investment earnings and
5 losses under section 254(c).

6 “(f) LIMITATION.—The sums in the Savings Fund

7 shall not be appropriated for any purpose other than the
8 purposes specified in this part and may not be used for
9 any other purpose.

10 **“SEC. 253. PARTICIPATION IN PROGRAM.**

11 “(a) PARTICIPATING INDIVIDUAL.—For purposes of

12 this part, the term ‘participating individual’ means any
13 individual—

14 “(1)(A) who receives wages in any calendar
15 year after December 31, 2010, on which there is im-
16 posed a tax under section 3101(a) of the Internal
17 Revenue Code of 1986, or

18 “(B) who derives self-employment income for a
19 taxable year beginning after December 31, 2010, on
20 which there is imposed a tax under section 1401(a)
21 of the Internal Revenue Code of 1986,

22 “(2) who is born on or after January 1, 1954,
23 and

24 “(3) who has not filed an election to renounce
25 such individual’s status as a participating individual

1 under subsection (b) or has filed such an election
2 and has subsequently filed an election to reinstate
3 such individual's status as a participating individual
4 under subsection (c).

5 “(b) RENUNCIATION OF PARTICIPATION.—

6 “(1) IN GENERAL.—An individual—

7 “(A) who has not attained retirement age
8 (as defined in section 216(l)(1)), and

9 “(B) with respect to whom no distribution
10 has been made from amounts credited to the in-
11 dividual's personal social security savings ac-
12 count for the purchase of a personal social se-
13 curity savings annuity,

14 may elect, in such form and manner as shall be pre-
15 scribed in regulations of the Board, to renounce
16 such individual's status as a ‘participating indi-
17 vidual’ for purposes of this part. Upon completion of
18 the procedures provided for under paragraph (2),
19 any such individual who has made such an election
20 shall not be treated as a participating individual
21 under this part, effective as if such individual had
22 never been a participating individual. The Board
23 shall provide for immediate notification of such elec-
24 tion to the Commissioner of Social Security, the Sec-
25 retary of the Treasury, and the Executive Director.

1 “(2) PROCEDURE.—The Board shall prescribe
2 by regulation procedures governing the termination
3 of an individual’s status as ‘participating individual’
4 pursuant to an election under this subsection. Such
5 procedures shall include—

6 “(A) prompt closing of the individual’s per-
7 sonal social security savings account established
8 under section 254,

9 “(B) revocation of any benefit credit cer-
10 tificate assigned to the individual’s personal so-
11 cial security savings account under section 255,
12 and

13 “(C) prompt transfer to the Federal Old-
14 Age and Survivors Insurance Trust Fund as
15 general receipts of any amount held in the Tier
16 II Investment Fund of the Savings Fund or
17 under a Tier III Investment Option pursuant to
18 section 256 or 257 and credited to such individ-
19 ual’s personal social security savings account.

20 “(c) REINSTATEMENT OF PARTICIPATION.—

21 “(1) IN GENERAL.—Any individual who has
22 filed an election under subsection (b) to renounce
23 such individual’s status as a ‘participating indi-
24 vidual’ under this part may elect, in such form and
25 manner as shall be prescribed in regulations of the

1 Board, to reinstate such status. Such regulations
 2 shall provide for regular, periodic opportunities for
 3 the filing of such an election. The Board shall pro-
 4 vide for immediate notification to the Commissioner
 5 of Social Security, the Secretary of the Treasury,
 6 and the Executive Director of such election.

7 “(2) EFFECTIVENESS OF REINSTATEMENT.—
 8 An election under this subsection shall be effective
 9 with respect to wages earned, and self-employment
 10 income derived, on the earliest date on which the
 11 Board determines is practicable to make such elec-
 12 tion effective following the date of the filing of the
 13 election. The individual filing the election shall be
 14 treated as becoming a participating individual under
 15 this part on the effective date of the election as if
 16 such individual first met the requirements of sub-
 17 section (a) on such date.

18 “(3) IRREVOCABILITY.—An election under this
 19 subsection shall be irrevocable.

20 **“SEC. 254. PERSONAL SOCIAL SECURITY SAVINGS AC-**
 21 **COUNTS.**

22 “(a) ESTABLISHMENT OF PUBLICLY ADMINISTERED
 23 SYSTEM OF PERSONAL SECURITY SAVINGS ACCOUNTS.—
 24 As soon as practicable after the later of January 1, 2011,
 25 or the date on which an individual becomes a participating

1 individual under this part, the Executive Director shall es-
2 tablish a personal social security savings account for such
3 individual. Such account shall be the means by which
4 amounts held in the Tier I Investment Fund and the Tier
5 II Investment Fund of the Savings Fund under sections
6 255 and 256 and amounts held under Tier III Investment
7 Options under section 257 are credited to such individual,
8 under procedures which shall be established by the Board
9 by regulation. Each account of a participating individual
10 shall be identified to such participating individual by
11 means of the participating individual's social security ac-
12 count number.

13 “(b) ACCOUNT BALANCE.—The balance in a partici-
14 pating individual's account at any time is the sum of—

15 “(1) the balance in the Tier I Investment Fund
16 of the Savings Fund credited to such participating
17 individual prior to transfer of the credited amount to
18 the Tier II Investment Fund of the Savings Fund;
19 plus

20 “(2) the excess of—

21 “(A) all deposits in the Tier II Investment
22 Fund of the Savings Fund credited to such par-
23 ticipating individual's personal social security
24 savings account, subject to such increases and
25 reductions as may result from allocations made

1 to and reductions made in the account pursuant
2 to subsection (c)(1); over

3 “(B) amounts paid out of the Tier II In-
4 vestment Fund in connection with amounts
5 credited to such participating individual’s per-
6 sonal social security savings account; plus

7 “(3) the excess of—

8 “(A) the deposits in the Tier III Invest-
9 ment Options credited to such participating in-
10 dividual’s personal social security savings ac-
11 count, subject to such increases and reductions
12 as may result from amounts credited to, and re-
13 ductions made in, the account pursuant to sub-
14 section (c)(2); over

15 “(B) amounts paid out of the Tier III In-
16 vestment Options of such participating indi-
17 vidual.

18 The calculation made under paragraph (3) shall be made
19 separately for each Tier III Investment Option of the par-
20 ticipating individual. The Board shall also hold for the
21 participating individual any benefit credit certificate as-
22 signed to the participating individual’s personal social se-
23 curity savings account under section 255.

24 “(c) ALLOCATION OF EARNINGS AND LOSSES.—Pur-
25 suant to regulations which shall be prescribed by the

1 Board, the Executive Director shall allocate to each per-
2 sonal social security savings account an amount equal to
3 the net earnings and net losses from each investment of
4 sums—

5 “(1) in the Tier I Investment Fund and the
6 Tier II Investment Fund which are attributable to
7 sums credited to such account reduced by an appro-
8 priate share of the administrative expenses paid out
9 of the net earnings, as determined by the Executive
10 Director; and

11 “(2) in the Tier III Investment Options which
12 are attributable to sums credited to such account re-
13 duced by the administrative expenses paid out of the
14 net earnings.

15 **“SEC. 255. TIER I INVESTMENT FUND.**

16 “(a) ESTABLISHMENT OF TIER I INVESTMENT
17 FUND.—

18 “(1) IN GENERAL.—The Savings Fund shall in-
19 clude a separate fund to be known as the ‘Tier I In-
20 vestment Fund’.

21 “(2) AMOUNTS IN FUND.—The Tier I Invest-
22 ment Fund consists of all amounts derived from
23 payments into the Fund under section 252(b) and
24 remaining after investment of such amounts under

1 subsection (b), including additional amounts derived
2 as income from such investments.

3 “(3) USE OF FUNDS.—The amounts held in the
4 Fund are appropriated and shall remain available
5 without fiscal year limitation—

6 “(A) to be held for investment on behalf of
7 participating individuals under subsection (b),

8 “(B) to pay the administrative expenses re-
9 lated to the Fund, and

10 “(C) to make transfers from the Fund
11 under subsection (c)(2).

12 “(b) INVESTMENT OF FUND BALANCE.—For pur-
13 poses of investment of the Tier I Investment Fund, the
14 Board shall contract with appropriate professional asset
15 managers, recordkeepers, and custodians selected for in-
16 vestment of amounts held in the Fund, so as to provide
17 for investment of the balance of the Fund, in a manner
18 providing broad diversification in accordance with regula-
19 tions of the Board, in—

20 “(1) insurance contracts,

21 “(2) certificates of deposit, or

22 “(3) other instruments or obligations selected
23 by such asset managers,

1 which return the amount invested and pay interest, at a
2 specified rate or rates, on that amount during a specified
3 period of time.

4 “(c) SEPARATE CREDITING TO PERSONAL SOCIAL
5 SECURITY SAVINGS ACCOUNTS AND TRANSFERS TO THE
6 TIER II INVESTMENT FUND OR TO TIER III INVESTMENT
7 OPTIONS.—

8 “(1) CREDITING TO ACCOUNTS.—

9 “(A) IN GENERAL.—Subject to this para-
10 graph, the Board shall provide for prompt, sep-
11 arate crediting, as soon as practicable, of the
12 amounts deposited in the Tier I Investment
13 Fund to the personal social security savings ac-
14 count of each participating individual with re-
15 spect to the redirected social security contribu-
16 tions (as defined in section 252(b)(3)) of such
17 participating individual. The Board shall in-
18 clude in such crediting, with respect to each
19 such individual, any increases or decreases in
20 such amounts so as to reflect the net returns
21 and losses from investment of the balance of
22 the Fund prior to such crediting. For purposes
23 of determining such increases and decreases for
24 each calendar year, the amounts deposited into
25 the Fund in connection with such individual

1 during such calendar year shall be deemed to
2 have been deposited on June 30 of such year.

3 “(B) TREATMENT OF MARRIED PARTICI-
4 PATING INDIVIDUALS.—If the participating in-
5 dividual is married as of the end of the calendar
6 year in which the amounts to be credited were
7 deposited in the Tier I Investment Fund and
8 the spouse is also a participating individual, the
9 personal social security savings account of the
10 participating individual and the personal social
11 security savings account of his or her spouse
12 shall each be credited with 50 percent of such
13 amounts.

14 “(2) TRANSFERS FROM THE TIER I INVEST-
15 MENT FUND.—In accordance with elections filed
16 with the Board by a participating individual, any
17 amount credited to the personal social security sav-
18 ings account of such participating individual under
19 paragraph (1) shall be promptly transferred to the
20 Tier II Investment Fund of the Savings Fund for
21 investment in accordance with section 256 and, to
22 the extent available under section 257, to Tier III
23 Investment Options in accordance with section 257.

24 “(d) TREATMENT OF AMOUNTS HELD IN TIER I IN-
25 VESTMENT FUND.—Subject to this part—

“ (1) until amounts deposited into the Tier I Investment Fund during any calendar year are credited to personal social security savings accounts, such amounts shall be treated as the unallocated property of all participating individuals with respect to whom amounts were deposited in the Fund during such year, jointly held in trust for such participating individuals in the Savings Fund, and

“ (2) amounts deposited into the Fund which are credited to the personal social security savings account of a participating individual shall be treated as property of the participating individual, held in trust for such participating individual in the Savings Fund.

“SEC. 256. TIER II INVESTMENT FUND.

“(a) ESTABLISHMENT OF TIER II INVESTMENT FUND.—

“(1) IN GENERAL.—The Savings Fund shall include a separate fund to be known as the ‘Tier II Investment Fund’.

“(2) AMOUNTS IN FUND.—The Tier II Investment Fund consists of all amounts derived from payments into the Fund under section 255(c)(2) and remaining after investment of such amounts under

1 subsection (b), including additional amounts derived
2 as income from such investments.

3 “(3) USE OF FUNDS.—The amounts held in the
4 Fund are appropriated and shall remain available
5 without fiscal year limitation—

6 “(A) to be held for investment under sub-
7 section (b),

8 “(B) to pay the administrative expenses re-
9 lated to the Fund, and

10 “(C) to make transfers to Tier III Invest-
11 ment Options under section 257 or to make
12 payments under section 258.

13 “(b) PAYMENTS INTO TIER II INVESTMENT FUND.—

14 “(1) IN GENERAL.—Upon the crediting under
15 section 252 to the personal social security savings
16 account of a participating individual of any amount
17 held in the Tier I Investment Fund for any calendar
18 year, the Board shall transfer from the Tier I In-
19 vestment Fund into the Tier II Investment Fund
20 any amount so credited to such participating individ-
21 ual’s account which is not transferred to a Tier III
22 Investment Option pursuant to an election under
23 section 257(a).

24 “(2) ONGOING SEPARATE CREDITING.—Subject
25 to this paragraph, the Board shall provide for ongo-

1 ing separate crediting to each participating individ-
2 ual's personal social security savings account of the
3 amounts deposited in the Tier II Investment Fund
4 with respect to such participating individual, to-
5 gether with any increases or decreases therein so as
6 to reflect the net returns and losses from investment
7 thereof while held in the Fund.

8 “(c) INVESTMENT ACCOUNTS.—

9 “(1) IN GENERAL.—For purposes of investment
10 of the Tier II Investment Fund, the Board shall di-
11 vide the Fund into 6 investment accounts. The
12 Board shall contract with appropriate investment
13 managers, recordkeepers, and custodians selected for
14 investment of amounts held in each investment ac-
15 count. Such accounts shall consist of—

16 “(A) a Lifecycle Investment Account,

17 “(B) a Government Securities Investment
18 Account,

19 “(C) a Fixed Income Investment Account,

20 “(D) a Common Stock Index Investment
21 Account,

22 “(E) a Small Capitalization Stock Index
23 Investment Account, and

24 “(F) an International Stock Index Invest-
25 ment Account.

1 “(2) ELECTION OF INVESTMENT OPTIONS.—

2 “(A) DEFAULT INVESTMENT ACCOUNT.—

3 Except as provided in an election in effect
4 under subparagraph (B), amounts held in the
5 Tier II Investment Fund shall be credited to
6 the Lifecycle Investment Account.

7 “(B) ELECTION OF TRANSFERS BETWEEN
8 INVESTMENT ACCOUNTS.—In any case in which
9 a participating individual who has an amount in
10 such individual’s personal social security sav-
11 ings account credited to any of the investment
12 accounts in the Tier II Investment Fund files
13 with the Secretary of the Treasury a written
14 election under this subparagraph, not more fre-
15 quently than annually and in accordance with
16 regulations of the Board, the Secretary of the
17 Treasury shall transfer the full amount so cred-
18 ited in such investment account from such in-
19 vestment account to any one of the other invest-
20 ment accounts in the Tier II Investment Fund
21 (whichever is designated in such election).

22 “(d) LIFECYCLE INVESTMENT ACCOUNT.—

23 “(1) IN GENERAL.—The investment manager,
24 recordkeeper, and custodian selected for investment
25 of amounts held in the Lifecycle Investment Account

1 shall invest such amounts under regulations which
2 shall be prescribed by the Board in a mix of equities
3 and fixed income instruments so as to ensure, to the
4 maximum extent practicable, that, of the total bal-
5 ance in the Fund credited to such account and avail-
6 able for investment (after allowing for administrative
7 expenses), the percentage invested in fixed income
8 instruments by individuals in designated cohorts,
9 ranging in age up to those of at least retirement
10 age, will increase in a linear progression from 0 per-
11 cent to 100 percent as the cohort approaches retire-
12 ment age.

13 “(2) INVESTMENT IN EQUITIES.—In accordance
14 with regulations which shall be prescribed by the
15 Board, the Board shall establish standards which
16 must be met by equities selected for investment in
17 the Lifecycle Investment Account. In conformity
18 with such standards, the Board shall select, for pur-
19 poses of such investment, indices which are com-
20 prised of equities the aggregate market value of
21 which is, in each case, a reasonably broad represen-
22 tation of companies whose shares are traded on the
23 equity markets. Amounts invested in equities under
24 an investment option shall be held in a portfolio de-

1 signed to replicate the performance of one or more
2 of such indices.

3 “(3) INVESTMENT IN FIXED INCOME INSTRU-
4 MENTS.—In accordance with regulations which shall
5 be prescribed by the Board, the Board shall estab-
6 lish standards which must be met by fixed income
7 instruments selected for investment in the Lifecycle
8 Investment Account. Such standards shall take into
9 account the competing considerations of risk and re-
10 turn. Amounts invested in fixed income instruments
11 in an investment option shall be held in a portfolio
12 which shall consist of a diverse range of fixed income
13 instruments, taking into full account the opposing
14 considerations of risk and maximization of return.

15 “(e) GOVERNMENT SECURITIES INVESTMENT AC-
16 COUNT.—

17 “(1) IN GENERAL.—Amounts in the Govern-
18 ment Securities Investment Account shall be in-
19 vested in securities of the United States Government
20 as provided in this subsection

21 “(2) ISSUANCE OF SPECIAL OBLIGATIONS.—
22 The Secretary of the Treasury is authorized to issue
23 special interest-bearing obligations of the United
24 States for purchase by the Tier II Investment Fund
25 for purposes of investment of amounts in the Gov-

ernment Securities Investment Account. Such obligations shall have maturities fixed with due regard to the needs of the Fund as determined by the Board, and shall bear interest at a rate equal to the average market yield (computed by the Secretary of the treasury on the basis of market quotations as of the end of the calendar month next preceding the date of issue of such obligations) on all marketable interest-bearing obligations of the United States then forming a part of the public debt which are not due or callable earlier than 4 years after the end of such calendar month. Any average market yield computed under this paragraph which is not a multiple of one-eighth of 1 percent shall be rounded to the nearest multiple of one-eighth of 1 percent.

“(f) FIXED INCOME INVESTMENT ACCOUNT.—

Amounts in the Fixed Income Investment Account shall be invested in instruments or obligations which return the amount invested and pay interest, at a specified rate or rates, on that amount during a specified period of time, consisting of instruments or obligations in one or more of the following categories:

“(1) insurance contracts;

“(2) certificates of deposit; or

1 “(3) other instruments or obligations selected
2 by qualified professional asset managers.

3 “(g) COMMON STOCK INDEX INVESTMENT AC-
4 COUNT.—

5 “(1) PORTFOLIO DESIGN.—Amounts held in the
6 Common Stock Investment Account shall be invested
7 in a portfolio of common stock designed to replicate
8 the performance of the index selected under para-
9 graph (2). The portfolio shall be designed such that,
10 to the extent practicable, the percentage of the bal-
11 ance in the Common Stock Index Investment Ac-
12 count that is invested in each stock is the same as
13 the percentage determined by dividing the aggregate
14 market value of all shares of that stock by the ag-
15 gregate market value of all shares of all stocks in-
16 cluded in such index.

17 “(2) SELECTION OF INDEX.—The Board shall
18 select, for purposes of investment of amounts held in
19 the Common Stock Investment Account, an index
20 which is a commonly recognized index comprised of
21 common stock the aggregate market value of which
22 is a reasonably complete representation of the
23 United States equity markets.

24 “(h) SMALL CAPITALIZATION STOCK INDEX INVEST-
25 MENT ACCOUNT.—

“(1) PORTFOLIO DESIGN.—Amounts held in the Small Capitalization Stock Index Investment Account shall be invested in a portfolio of common stock designed to replicate the performance of the index selected under paragraph (2). The portfolio shall be designed such that, to the extent practicable, the percentage of the balance in the Small Capitalization Stock Index Investment Account that is invested in each stock is the same as the percentage determined by dividing the aggregate market value of all shares of that stock by the aggregate market value of all shares of all stocks included in such index.

“(2) SELECTION OF INDEX.—The Board shall select, for purposes of investment of amounts held in the Small Capitalization Stock Index Investment Account, an index which is a commonly recognized index comprised of common stock the aggregate market value of which represents the United States equity markets excluding the common stocks included in the Common Stock Index Investment Account.

“(i) INTERNATIONAL STOCK INDEX INVESTMENT ACCOUNT.—

1 “(1) PORTFOLIO DESIGN.—Amounts held in the
2 International Stock Index Investment Account shall
3 be invested in a portfolio of stock designed to rep-
4 licate the performance of the index selected under
5 paragraph (2). The portfolio shall be designed such
6 that, to the extent practicable, the percentage of the
7 balance in the International Stock Index Investment
8 Account that is invested in each stock is the same
9 as the percentage determined by dividing the aggre-
10 gate market value of all shares of that stock by the
11 aggregate market value of all shares of all stocks in-
12 cluded in such index.

13 “(2) SELECTION OF INDEX.—The Board shall
14 select, for purposes of investment of amounts held in
15 the International Stock Index Investment Account,
16 an index which is a commonly recognized index com-
17 prised of common stock the aggregate market value
18 of which is a reasonably complete representation of
19 the international equity markets excluding the
20 United States equity markets.

21 “(j) ADDITIONAL INVESTMENT OPTIONS.—The
22 Board may from time to time, as determined by regulation
23 as appropriate to further the purposes of this section,
24 shall—

“(1) establish investment accounts in the Tier II Investment Fund meeting the requirements of this section in addition to those established by this section, and

“(2) terminate investment accounts in the Tier II Investment Fund established pursuant to paragraph (1).

“(k) DISCLOSURE OF ADMINISTRATIVE COSTS.—The Board shall provide to each participating individual an annual disclosure of the rate of administrative costs chargeable with respect to investment in each investment account in the Tier II Investment Fund. Such disclosure shall be written in a manner calculated to be understood by the average participating individual.

“(l) TREATMENT OF AMOUNTS HELD IN TIER II INVESTMENT FUND.—Subject to this part, amounts deposited into, and held and accounted for in, the Tier II Investment Fund with respect to any participating individual shall continue to be treated as property of such participating individual, held in trust for such participating individual in the Fund.

“SEC. 257. TIER III INVESTMENT OPTIONS.

“(a) ELECTION OF TIER III INVESTMENT OPTIONS.—

1 “(1) IN GENERAL.—A participating individual
2 may elect to direct transfers from amounts in the
3 Savings Fund credited to the personal social security
4 savings account of such individual into 1 or more
5 Tier III Investment Options in accordance with
6 paragraph (2).

7 “(2) COMMENCEMENT OF TIER III INVESTMENT
8 OPTIONS UPON ATTAINMENT OF ELECTION THRESH-
9 OLD.—In any case in which, as of the end of any
10 calendar year, the total balance in the Savings Fund
11 credited to a participating individual’s personal so-
12 cial security savings account exceeds for the first
13 time the election threshold, the Board shall, by regu-
14 lation, provide for an opportunity for such partici-
15 pating individual to make, at any time thereafter,
16 such individual’s first election of one or more of the
17 Tier III Investment Options for investment of an
18 amount in the Savings Fund credited to such ac-
19 count. Such election may be in lieu of or in addition
20 to investment in the options available with respect to
21 the Tier II Investment Fund of the Savings Fund.

22 “(3) ALLOCATION OF FUNDS.—In the case of
23 an election under paragraph (1), funds credited to
24 the personal social security savings account of the
25 participating individual and elected for transfer to

1 one or more Tier III Investment Options shall be
2 transferred to the Tier III Investment Options so
3 elected for such calendar year, in percentages speci-
4 fied in the election by the participating individual for
5 each applicable portfolio.

6 “(4) ELECTION THRESHOLD.—

7 “(A) IN GENERAL.—Subject to subpara-
8 graph (B), for purposes of this subsection the
9 term ‘election threshold’ means an amount
10 equal to \$25,000.

11 “(B) ADJUSTMENTS.—The Board shall ad-
12 just annually (effective for annual reporting
13 months occurring after December 2011) the
14 dollar amount set forth in subparagraph (A)
15 under procedures providing for adjustments in
16 the same manner and to the same extent as ad-
17 justments are provided for under the proce-
18 dures used to adjust benefit amounts under sec-
19 tion 215(i)(2)(A), except that any amount so
20 adjusted that is not a multiple of \$1.00 shall be
21 rounded to the nearest multiple of \$1.00.

22 “(5) SUBSEQUENT INVESTMENT OF AMOUNTS
23 HELD IN TIER III INVESTMENT OPTIONS.—Any
24 amounts held in one or more Tier III Investment
25 Options may be—

1 “(A) transferred at any time to one or
2 more other Tier III Investment Options, subject
3 to applicable regulations of the Board and the
4 terms governing the affected Tier III Invest-
5 ment Options, and

6 “(B) transferred, not more frequently than
7 annually, to the Tier II Investment Fund, for
8 deposit in the applicable investment account
9 then selected by the participating individual
10 under section 256.

11 “(b) CERTIFICATION OF ELIGIBLE ENTITIES.—

12 “(1) IN GENERAL.—The Board shall certify eli-
13 gible entities to offer Tier III Investment Options
14 under this part.

15 “(2) APPLICATION.—Any eligible entity that de-
16 sires to be certified by the Board to offer a Tier III
17 Investment Option shall submit an application to the
18 Board at such time, in such manner, and containing
19 such information as the Board may require.

20 “(3) REQUIREMENTS FOR APPROVAL.—The
21 Board shall not certify an eligible entity unless such
22 eligible entity agrees to the following requirements:

23 “(A) SEPARATE ACCOUNTING.—Each eligi-
24 ble entity shall, with respect to each Tier III

Investment Option offered by such eligible entity to participating individuals—

“(i) establish separate accounts for the contributions of each participating individual, and any earnings properly allocable to the contributions, and

“(ii) maintain separate recordkeeping with respect to each account.

“(B) TREATMENT OF AMOUNTS HELD IN FUND.—Amounts deposited into, and held and accounted for in, a Tier III Investment Option with respect to any participating individual shall be treated as property of such participating individual, held in trust for such participating individual.

“(C) TRUST REQUIREMENTS.—Amounts held and accounted for with respect to a participating individual shall be held in a trust created or organized in the United States for the exclusive benefit of such individual or his beneficiaries.

“(D) EXEMPTION FROM THIRD PARTY CLAIMS.—Each Tier III Investment Option shall be exempt from any and all third party claims against the eligible entity.

1 “(E) DISCLOSURE OF ADMINISTRATIVE
2 COSTS.—Each eligible entity offering a Tier III
3 Investment Option under this section shall pro-
4 vide to each participating individual an annual
5 disclosure of the rate of administrative costs
6 chargeable with respect to investment in such
7 Option. Such disclosure shall be written in a
8 manner calculated to be understood by the av-
9 erage participating individual. The Board shall
10 provide for coordination of disclosures with re-
11 spect to Tier III Investment Options under this
12 subparagraph so as to assist participating indi-
13 viduals in comparing alternative Options based
14 on administrative costs.

15 “(F) REPORTING TO THE EXECUTIVE DI-
16 RECTOR AND THE BOARD.—Each eligible entity
17 shall provide reports to the Executive Director
18 and the Board at such time, in such manner,
19 and containing such information as the Board
20 may require.

21 “(4) ELIGIBLE ENTITY DEFINED.—For pur-
22 poses of this section, the term ‘eligible entity’ means
23 any investment company (as defined in section 3 of
24 the Investment Company Act of 1940) or other per-

son that the Board determines appropriate to offer Tier III Investment Options under this part.

“(c) APPROVAL OF TIER III INVESTMENT OPTIONS.—

“(1) IN GENERAL.—No funds may be transferred into a Tier III Investment Option unless the Board has approved an application submitted under paragraph (2) with respect to the option.

“(2) APPLICATION.—With respect to each Tier III Investment Option that an eligible entity certified under subsection (b)(1) seeks to offer, such entity shall submit an application to the Board at such time, in such manner, and containing such information as the Board may require.

“(3) QUALIFICATIONS FOR APPROVAL.—The Board may not approve an application submitted under paragraph (2) in connection with a Tier III Investment Option unless the following requirements are met:

“(A) OPTION MUST BE OFFERED BY CERTIFIED ELIGIBLE ENTITY.—The Tier III Investment Option is offered by an eligible entity certified under subsection (b).

“(B) OPTION MUST MEET QUALITY FACTORS.—

1 “(i) IN GENERAL.—The Tier III In-
2 vestment Option meets qualifications which
3 shall be prescribed by the Board relating
4 to the quality factors described in clause
5 (ii).

6 “(ii) QUALITY FACTORS.—The quality
7 factors described in this clause are—

8 “(I) the safety and soundness of
9 the Tier III Investment Option’s pro-
10 posed investment policy;

11 “(II) the experience and record
12 of performance of the proposed invest-
13 ment option, if any;

14 “(III) the experience and record
15 of performance of the entity issuing or
16 offering such option; and

17 “(IV) such other factors as the
18 Board may determine appropriate.

19 “(d) CONSIDERATIONS FOR CERTIFICATION AND AP-
20 PROVAL.—In determining whether to certify an eligible en-
21 tity under subsection (b) or to approve a Tier III Invest-
22 ment Option under subsection (c), the Board shall—

23 “(1) act in the best interests of the partici-
24 pating individuals;

“(2) base its determination solely on considerations of balancing safety and soundness of the Tier III Investment Option with the maximization of returns of such option; and

“(3) not base any determination related to the entity or option on political or other extraneous considerations.

“(e) SPONSORSHIP OF TIER III INVESTMENT OPTIONS BY MEMBERSHIP AND LABOR ORGANIZATIONS.—

“(1) IN GENERAL.—A membership or labor organization (as defined by the Board) may sponsor Tier III Investment Options under contracts with eligible entities certified under subsection (b) who shall administer the investment option if such investment option is approved by the Board under subsection (c).

“(2) LIMITATION TO MEMBERSHIP.—A membership or labor organization (as so defined) may limit to the members of such organization participation in a Tier III Investment Option sponsored by such organization.

“(f) DISTRIBUTIONS IN CASE OF DEATH.—Upon the death of a participating individual, the amount of any assets held under a Tier III Investment Option credited to the personal social security savings account of such indi-

1 vidual shall be distributed in accordance with section
2 258(e).

3 **“SEC. 258. PERSONAL SOCIAL SECURITY SAVINGS ANNUITY**
4 **AND OTHER DISTRIBUTIONS.**

5 “(a) DATE OF INITIAL DISTRIBUTION.—Except as
6 provided in subsection (e), distributions may be made to
7 a participating individual from amounts credited to the
8 personal social security savings account of such individual
9 only on or after the earliest of—

10 “(1) the date the participating individual at-
11 tains retirement age (as defined in section 216(l)(1))
12 or, if elected by the individual, early retirement age
13 (as defined in section 216(l)(2)); or

14 “(2) the date on which the amount credited to
15 the participating individual’s personal social security
16 savings account is sufficient to purchase a personal
17 social security savings annuity with a monthly ben-
18 efit that is at least equal to the minimum annuity
19 payment amount (as defined in subsection
20 (b)(4)(C)(iii)).

21 “(b) PERSONAL SOCIAL SECURITY SAVINGS ANNU-
22 ITIES.—

23 “(1) NOTICE OF AVAILABLE ANNUITIES.—Not
24 later than the date determined under subsection (a),

1 the Board shall notify each participating individual
2 of—

3 “(A) the most recent listing of personal so-
4 cial security savings annuities offered by the
5 Annuity Issuance Authority under paragraph
6 (2); and

7 “(B) the entitlement of the participating
8 individual to purchase such an annuity.

9 “(2) ANNUITY ISSUANCE AUTHORITY.—There is
10 established in the office of the Board an agency
11 which shall be known as the ‘Annuity Issuance Au-
12 thority’. The Authority shall provide, in accordance
13 with regulations of the Board, for the issuance of
14 personal social security savings annuities for pur-
15 chase from the Authority under this section and to
16 otherwise administer the issuance of such annuities
17 in accordance with such regulations.

18 “(3) ANNUITY RESERVES ACCOUNT.—There is
19 established in the Savings Fund an Annuity Re-
20 serves Account. The Account shall consist of all
21 amounts received by the Authority from the pur-
22 chase of personal social security savings annuities
23 under this section (plus such amounts as may be
24 transferred to the Account under paragraph (5)(B)),
25 increased by the total net earnings from investments

1 of such reserves under subparagraph (A) of para-
2 graph (5) and reduced by the total net losses from
3 investments of such reserves under such subpara-
4 graph.

5 “(4) PURCHASE OF ANNUITIES.—

6 “(A) SELECTION OF ANNUITY.—On a date
7 elected by the participating individual, but no
8 earlier than the date determined under sub-
9 section (a), a participating individual may pur-
10 chase a personal social security savings annuity
11 selected from among the annuities offered by
12 the Authority under paragraph (2).

13 “(B) TRANSFER OF ASSETS.—Upon the
14 selection of an annuity by a participating indi-
15 vidual under subparagraph (A), the Board shall
16 provide for the transfer of assets, credited to
17 the personal social security savings account of
18 the participating individual and held in the Tier
19 II Investment Fund or under 1 or more Tier
20 III Investment Options (or any combination
21 thereof), in a total amount sufficient to pur-
22 chase the annuity selected by the participating
23 individual from annuities offered by the Author-
24 ity.

1 “(C) MINIMUM ANNUITY PAYMENT
2 AMOUNT.—

3 “(i) IN GENERAL.—Subject to sub-
4 paragraph (D), if, at the time a personal
5 social security savings annuity is pur-
6 chased under subparagraph (A), the assets
7 credited to the personal social security sav-
8 ings account of the participating individual
9 are sufficient to purchase a personal social
10 security savings annuity offered by the Au-
11 thority under paragraph (2) with a month-
12 ly annuity payment that is at least equal
13 to the minimum annuity payment amount,
14 the amount of the monthly annuity pay-
15 ment provided by such annuity may not be
16 less than the minimum annuity payment
17 amount.

18 “(ii) CONSTRUCTION.—Nothing in
19 this subparagraph shall be construed to
20 prohibit a participating individual from
21 using personal social security savings ac-
22 count assets to purchase a personal social
23 security savings annuity offered by the Au-
24 thority under paragraph (2) which provides
25 for a monthly payment in excess of the

1 minimum amount required under clause
2 (i).

3 “(iii) MINIMUM ANNUITY PAYMENT
4 AMOUNT DEFINED.—For purposes of this
5 part, the term ‘minimum annuity payment
6 amount’ means, as of any date, an amount
7 equal to the monthly equivalent of 150 per-
8 cent of the poverty line for an individual
9 (as in effect on such date), determined
10 under the poverty guidelines of the Depart-
11 ment of Health and Human Services
12 issued under sections 652 and 673(2) of
13 the Omnibus Budget Reconciliation Act of
14 1981.

15 “(D) PURCHASE OF ANNUITIES IN THE
16 EVENT OF INSUFFICIENT ASSETS.—If a partici-
17 pating individual desires, or is required under
18 subsection (f), to purchase a personal social se-
19 curity savings annuity under subsection (b) on
20 or after the date determined under subsection
21 (a)(1) and the assets of the personal social se-
22 curity savings account of such individual are in-
23 sufficient to purchase a personal social security
24 savings annuity that provides for a monthly
25 payment that is at least equal to the minimum

1 annuity payment amount (as defined in para-
2 graph (4)(C)(iii)), the participating individual
3 shall purchase a personal social security savings
4 annuity with a monthly payment equal to the
5 maximum amount that the participating indi-
6 vidual's personal social security savings account
7 can fund, as determined in accordance with reg-
8 ulations which shall be prescribed by the Au-
9 thority, and that otherwise meets the require-
10 ments of this subsection (including the cost-of-
11 living protection requirement of subsection
12 (c)(1)(C)), and the Authority shall provide for
13 appropriate certification to the Secretary of the
14 Treasury with respect to the participating indi-
15 vidual's eligibility for guarantee payments
16 under section 259.

17 “(5) MAINTENANCE OF RESERVES FOR PAY-
18 MENT OF ANNUITIES.—

19 “(A) INVESTMENT OF RESERVES.—For
20 purposes of investment of reserves held in the
21 Annuity Reserves Account, the Authority shall
22 contract with appropriate investment managers,
23 recordkeepers, and custodians selected by the
24 Authority for investment of such reserves. Such
25 reserves shall be invested under regulations

1 which shall be prescribed by the Authority so as
2 to ensure, to the maximum extent practicable,
3 that, of the total balance of the reserves (after
4 payment of administrative expenses to such
5 managers, recordkeepers, and custodians)—

6 “(i) 65 percent is invested in equities
7 in the same manner and under the same
8 standards as are provided in section
9 256(c)(4), and

10 “(ii) 35 percent is invested in fixed in-
11 come instruments in the same manner and
12 under the same standards as are provided
13 in section 256(c)(5).

14 “(B) PROVISION FOR FULL PAYMENT OF
15 ANNUITIES.—Payment of personal social secu-
16 rity savings annuities in accordance with the
17 terms of such annuities shall be made, irrespec-
18 tive of the sufficiency of reserves in the Annuity
19 Reserves Fund attributable to funds obtained
20 from the purchase of such annuities. In the
21 event of any impending insufficiency in the An-
22 nuity Reserves Account for the next fiscal year,
23 the Authority shall certify to the Secretary of
24 the Treasury the amount of such insufficiency,
25 and the Secretary of the Treasury shall transfer

1 from the Federal Old-Age and Survivors Insur-
2 ance Trust Fund to the Annuity Reserves Ac-
3 count the amount of the insufficiency, as so cer-
4 tified, in such installments, made prior to or
5 during such fiscal year, as are necessary to
6 eliminate in advance such insufficiency.

7 “(c) PERSONAL SOCIAL SECURITY SAVINGS ANNU-
8 ITY.—

9 “(1) IN GENERAL.—For purposes of this part,
10 the term ‘personal social security savings annuity’
11 means an annuity that meets the following require-
12 ments:

13 “(A) The annuity starting date (as defined
14 in section 72(c)(4) of the Internal Revenue
15 Code of 1986) commences on the first day of
16 the month beginning after the date of the pur-
17 chase of the annuity.

18 “(B) The terms of the annuity provide—

19 “(i) for a monthly payment to the
20 participating individual during the life of
21 the participating individual equal to at
22 least the minimum annuity payment
23 amount (as defined in subsection
24 (b)(4)(C)(iii)), or

1 “(ii) in the case of an annuity pur-
2 chased under subparagraph (D) of sub-
3 section (b)(4), the maximum monthly pay-
4 ment determined under regulations pre-
5 scribed under such subparagraph.

6 “(C) The terms of the annuity include pro-
7 cedures providing for adjustments in the
8 amount of the monthly payments in the same
9 manner and to the same extent as adjustments
10 are provided for under the procedures used to
11 adjust benefit amounts under section
12 215(i)(2)(A). Nothing in this subparagraph
13 shall be construed to preclude the terms gov-
14 erning such an annuity from providing for ad-
15 justments in the amount of monthly payments
16 resulting in a payment for any month greater
17 than the payment for that month that would re-
18 sult from adjustments required under the pre-
19 ceding sentence (b)(4)(D).

20 “(D) The terms of the annuity include
21 such other terms and conditions as the Board
22 requires for the protection of the annuitant.

23 “(2) EXEMPTION FROM THIRD PARTY
24 CLAIMS.—Each personal social security savings an-

1 nuity shall be exempt from any and all third party
2 claims against the issuer.

3 “(d) RIGHT TO USE EXCESS PERSONAL SOCIAL SE-
4 CURITY SAVINGS ACCOUNT ASSETS.—To the extent assets
5 credited to a participating individual’s personal social se-
6 curity savings account remain after the purchase of an an-
7 nuity under subsection (b), the remaining assets shall be
8 payable to the participating individual at such time, in
9 such manner, and in such amounts as the participating
10 individual may specify, subject to subsection (f).

11 “(e) DISTRIBUTIONS IN CASE OF DEATH.—If the
12 participating individual dies before all amounts which are
13 held in the Tier I Investment Fund or the Tier II Invest-
14 ment Fund of the Savings Fund or held under a Tier III
15 Investment Option and which are credited to the personal
16 social security savings account of the individual are other-
17 wise distributed in accordance with this section, such
18 amounts shall be distributed, under regulations which
19 shall be prescribed by the Board—

20 “(1) in any case in which one or more bene-
21 ficiaries have been designated in advance, to such
22 beneficiaries in accordance with such designation as
23 provided in such regulations, and

1 “(2) in the case of any amount not distributed
2 as described in paragraph (1), to such individual’s
3 estate.

4 “(f) DATE OF FINAL DISTRIBUTION.—All amounts
5 credited to the personal social security savings account of
6 an individual shall be distributed, by means of the pur-
7 chase of annuities or otherwise in a manner consistent
8 with the requirements of this section, not later than 5
9 years after the date the individual attains retirement age
10 (as defined in section 216(l)). The Board shall provide by
11 regulation for means of distribution necessary to ensure
12 compliance with the requirements of this subsection.

13 **“SEC. 259. GUARANTEE OF PROMISED BENEFITS.**

14 “(a) IN GENERAL.—If, for any month ending after
15 the date on which a participating individual attains retire-
16 ment age (as defined in section 216(l)(1)), the monthly
17 payment under a participating individual’s personal social
18 security savings annuity is less than the minimum annuity
19 payment amount (as defined in section 258(b)(4)(C)(iii)),
20 adjusted as provided in section 258(c)(1)(C), the Annuity
21 Issuance Authority shall so certify to the Secretary of the
22 Treasury and, upon receipt of such certification, such Sec-
23 retary shall provide to the participating individual, from
24 amounts in the Federal Old-Age and Survivors Insurance
25 Trust Fund, a guaranty payment for such month to sup-

1 plement the personal social security savings annuity and
 2 to guarantee full payment of such individual's monthly
 3 promised benefits.

4 “(b) GUARANTY PAYMENT.—For purposes of sub-
 5 section (a), a participating individual's guaranty payment
 6 for any month is equal to the excess of—

7 “(1) the minimum annuity payment amount (as
 8 defined in section 258(b)(4)(C)(iii)), adjusted as
 9 provided in section 258(c)(1)(C); over

10 “(2) the payment for such month of the per-
 11 sonal social security savings annuity purchased by
 12 the participating individual.

13 “(c) PROTECTION OF PART A NORMAL RETIREMENT
 14 BENEFIT LEVELS.—

15 “(1) IN GENERAL.—In any case in which, for
 16 any month ending after the date on which a partici-
 17 pating individual attains retirement age (as defined
 18 in section 216(l)(1))—

19 “(A) such individual's assumed total nor-
 20 mal retirement part A benefit for such month,
 21 exceeds

22 “(B) the monthly payment payable for
 23 such month under such individual's personal so-
 24 cial security savings annuity,

1 the Secretary of the Treasury shall pay to such indi-
 2 vidual for such month, from amounts in the Federal
 3 Old-Age and Survivors Insurance Trust Fund, an
 4 additional amount (if any) equal to the excess of the
 5 amount described in subparagraph (A) over the
 6 amount described in subparagraph (B).

7 “(2) DEFINITION.—For purposes of this sub-
 8 section, the term ‘assumed total normal retirement
 9 part A benefit’ means, in connection with a partici-
 10 pating individual, the total amount of monthly insur-
 11 ance benefits under section 202 based on such indi-
 12 vidual’s wages and self-employment income (ad-
 13 justed by taking into account adjustments under sec-
 14 tion 215(i)) that would have been payable if—

15 “(A) section 202(z) did not apply, and

16 “(B) such individual applied for old-age in-
 17 surance benefits under section 202(a) during
 18 the month in which such individual attains re-
 19 tirement age (as defined in section 216(l)(1)).

20 **“SEC. 260. PERSONAL SOCIAL SECURITY SAVINGS BOARD.**

21 “(a) ESTABLISHMENT.—There is established in the
 22 executive branch of the Government a Personal Social Se-
 23 curity Savings Board.

24 “(b) COMPOSITION.—The Board shall be composed
 25 of—

1 “(1) 3 members appointed by the President, of
2 whom 1 shall be designated by the President as
3 Chairman; and

4 “(2) 2 members appointed by the President, of
5 whom—

6 “(A) 1 shall be appointed by the President
7 after taking into consideration the recommenda-
8 tion made by the Speaker of the House of Rep-
9 resentatives in consultation with the minority
10 leader of the House of Representatives; and

11 “(B) 1 shall be appointed by the President
12 after taking into consideration the recommenda-
13 tion made by the majority leader of the Senate
14 in consultation with the minority leader of the
15 Senate.

16 “(c) ADVICE AND CONSENT.—Appointments under
17 subsection (b) shall be made by and with the advice and
18 consent of the Senate.

19 “(d) MEMBERSHIP REQUIREMENTS.—Members of
20 the Board shall have substantial experience, training, and
21 expertise in the management of financial investments and
22 pension benefit plans.

23 “(e) LENGTH OF APPOINTMENTS.—

1 “(1) TERMS.—A member of the Board shall be
2 appointed for a term of 4 years, except that of the
3 members first appointed under subsection (b)—

4 “(A) the Chairman shall be appointed for
5 a term of 4 years;

6 “(B) the members appointed under sub-
7 section (b)(2) shall be appointed for terms of 3
8 years; and

9 “(C) the remaining members shall be ap-
10 pointed for terms of 2 years.

11 “(2) VACANCIES.—

12 “(A) IN GENERAL.—A vacancy on the
13 Board shall be filled in the manner in which the
14 original appointment was made and shall be
15 subject to any conditions that applied with re-
16 spect to the original appointment.

17 “(B) COMPLETION OF TERM.—An indi-
18 vidual chosen to fill a vacancy shall be ap-
19 pointed for the unexpired term of the member
20 replaced.

21 “(3) EXPIRATION.—The term of any member
22 shall not expire before the date on which the mem-
23 ber’s successor takes office.

24 “(f) DUTIES.—The Board shall—

1 “(1) administer the program established under
2 this part;

3 “(2) establish policies for the investment and
4 management of the Savings Fund, including the
5 Tier I Investment Fund and the Tier II Investment
6 Fund, and amounts held under Tier III Investment
7 Options, including policies applicable to the asset
8 managers, recordkeepers, and custodians with re-
9 sponsibility for managing the investment of amounts
10 credited to personal social security investment ac-
11 counts, and for the management and operation of
12 personal social security savings annuities, which
13 shall provide for—

14 “(A) prudent investments suitable for ac-
15 cumulating funds for payment of retirement in-
16 come;

17 “(B) sound management practices; and

18 “(C) low administrative costs;

19 “(3) review the performance of investments
20 made for the Tier I Investment Fund and the Tier
21 II Investment Fund;

22 “(4) review the performance of investments
23 made under Tier III Investment Options;

24 “(5) review the management and operation of
25 personal social security savings annuities;

1 “(6) review and approve the budget of the
2 Board; and

3 “(7) comply with the fiduciary requirements of
4 part 4 of subtitle B of title I of the Employee Re-
5 tirement Income Security Act of 1974 (relating to fi-
6 duciary responsibility) in connection with any exer-
7 cise of discretion in connection with the assets of the
8 Savings Fund.

9 “(g) ADMINISTRATIVE PROVISIONS.—

10 “(1) IN GENERAL.—The Board may—

11 “(A) adopt, alter, and use a seal;

12 “(B) except as provided in paragraph (4),
13 direct the Executive Director to take such ac-
14 tion as the Board considers appropriate to
15 carry out the provisions of this part and the
16 policies of the Board in accordance with delega-
17 tions under this part;

18 “(C) upon the concurring votes of 4 mem-
19 bers, remove the Executive Director from office
20 for good cause shown;

21 “(D) provide to the Executive Director
22 such resources as are necessary to carry out the
23 duties of the Executive Director; and

1 “(E) take such other actions as may be
2 necessary to carry out the functions of the
3 Board.

4 “(2) MEETINGS.—The Board shall meet—

5 “(A) not less than once during each
6 month; and

7 “(B) at additional times at the call of the
8 Chairman.

9 “(3) EXERCISE OF POWERS.—

10 “(A) IN GENERAL.—Except as provided in
11 paragraph (1)(C), the Board shall perform the
12 functions and exercise the powers of the Board
13 on a majority vote of a quorum of the Board.
14 Three members of the Board shall constitute a
15 quorum for the transaction of business.

16 “(B) VACANCIES.—A vacancy on the
17 Board shall not impair the authority of a
18 quorum of the Board to perform the functions
19 and exercise the powers of the Board.

20 “(4) LIMITATIONS ON INVESTMENTS.—The
21 Board may not direct any person to invest or to
22 cause to be invested any sums in the Tier II Invest-
23 ment Fund or any personal social security invest-
24 ment account in a specific asset or to dispose of or

1 cause to be disposed of any specific asset of such
2 Fund or any such account.

3 “(h) COMPENSATION.—

4 “(1) IN GENERAL.—Each member of the Board
5 who is not an officer or employee of the Federal
6 Government shall be compensated at the daily rate
7 of basic pay for level IV of the Executive Schedule
8 for each day during which such member is engaged
9 in performing a function of the Board.

10 “(2) EXPENSES.—A member of the Board shall
11 be paid travel, per diem, and other necessary ex-
12 penses under subchapter I of chapter 57 of title 5,
13 United States Code, while traveling away from such
14 member’s home or regular place of business in the
15 performance of the duties of the Board.

16 “(3) SOURCE OF FUNDS.—Payments authorized
17 under this subsection shall be paid from the Tier I
18 Investment Fund or the Tier II Investment Fund,
19 as determined appropriate by the Board.

20 “(i) DISCHARGE OF RESPONSIBILITIES.—The mem-
21 bers of the Board shall discharge their responsibilities
22 solely in the interest of the participating individuals and
23 their beneficiaries under this part.

1 “(j) ANNUAL INDEPENDENT AUDIT.—The Board
2 shall annually engage an independent qualified public ac-
3 countant to audit the activities of the Board.

4 “(k) SUBMISSION OF BUDGET TO CONGRESS.—The
5 Board shall prepare and submit to the President, and, at
6 the same time, to the appropriate committees of Congress,
7 an annual budget of the expenses and other items relating
8 to the Board which shall be included as a separate item
9 in the budget required to be transmitted to Congress
10 under section 1105 of title 31, United States Code.

11 “(l) SUBMISSION OF LEGISLATIVE RECOMMENDA-
12 TIONS.—The Board may submit to the President, and, at
13 the same time, shall submit to each House of Congress,
14 any legislative recommendations of the Board relating to
15 any of its functions under this part or any other provision
16 of law.

17 **“SEC. 261. EXECUTIVE DIRECTOR.**

18 “(a) APPOINTMENT OF EXECUTIVE DIRECTOR.—The
19 Board shall appoint, without regard to the provisions of
20 law governing appointments in the competitive service, an
21 Executive Director by action agreed to by a majority of
22 the members of the Board.

23 “(b) DUTIES.—The Executive Director shall, as de-
24 termined appropriate by the Board—

1 “(1) carry out the policies established by the
2 Board;

3 “(2) invest and manage the Tier I Investment
4 Fund and the Tier II Investment Fund in accord-
5 ance with the investment policies and other policies
6 established by the Board;

7 “(3) administer the provisions of this part re-
8 lating to the Tier I Investment Fund and the Tier
9 II Investment Fund; and

10 “(4) prescribe such regulations (other than reg-
11 ulations relating to fiduciary responsibilities) as may
12 be necessary for the administration of this part re-
13 lating to the Tier I Investment Fund and the Tier
14 II Investment Fund.

15 “(c) ADMINISTRATIVE AUTHORITY.—The Executive
16 Director may, within the scope of the duties of the Execu-
17 tive Director as determined by the Board—

18 “(1) appoint such personnel as may be nec-
19 essary to carry out the provisions of this part relat-
20 ing to the Tier I Investment Fund and the Tier II
21 Investment Fund;

22 “(2) subject to approval by the Board, procure
23 the services of experts and consultants under section
24 3109 of title 5, United States Code;

1 “(3) secure directly from an Executive agency,
2 the United States Postal Service, or the Postal Rate
3 Commission any information necessary to carry out
4 the provisions of this part and the policies of the
5 Board relating to the Tier I Investment Fund and
6 the Tier II Investment Fund;

7 “(4) make such payments out of sums in the
8 Tier I Investment Fund and the Tier II Investment
9 Fund as the Executive Director determines, in ac-
10 cordance with regulations of the Board, are nec-
11 essary to carry out the provisions of this part and
12 the policies of the Board;

13 “(5) pay the compensation, per diem, and travel
14 expenses of individuals appointed under paragraphs
15 (1), (2), and (6) from the Tier I Investment Fund
16 or the Tier II Investment Fund, in accordance with
17 regulations of the Board;

18 “(6) accept and use the services of individuals
19 employed intermittently in the Government service
20 and reimburse such individuals for travel expenses,
21 authorized by section 5703 of title 5, United States
22 Code, including per diem as authorized by section
23 5702 of such title;

24 “(7) except as otherwise expressly prohibited by
25 law or the policies of the Board, delegate any of the

1 Executive Director's functions to such employees
2 under the Board as the Executive Director may des-
3 ignate and authorize such successive redelegations of
4 such functions to such employees under the Board
5 as the Executive Director may consider to be nec-
6 essary or appropriate; and

7 “(8) take such other actions as are appropriate
8 to carry out the functions of the Executive Direc-
9 tor.”.

10 (b) EFFECTIVE DATE.—The amendments made by
11 this section shall apply with respect to wages paid after
12 December 31, 2010, for pay periods ending after such
13 date and self-employment income for taxable years begin-
14 ning after such date.

15 **SEC. 403. MONTHLY INSURANCE BENEFITS FOR PARTICI-**
16 **PATING INDIVIDUALS.**

17 Section 202 of the Social Security Act (42 U.S.C.
18 402) is amended by adding at the end the following new
19 subsection:

20 “Benefits for Participants Under Part B

21 “(z)(1) Notwithstanding the preceding provisions of
22 this section—

23 “(A) a participating individual under the Per-
24 sonal Social Security Savings Program under part B

shall not be entitled to old-age insurance benefits under subsection (a); and

“(B) except as provided in paragraph (2), no individual shall be entitled to benefits under this section on the basis of the wages and self-employment income of such a participating individual.

“(2) In the case of any such participating individual who dies before such individual purchases a personal social security savings annuity under section 258, paragraph (1)(B) shall not apply with respect to child’s insurance benefits under subsection (d), widow’s insurance benefits under subsection (e), widower’s insurance benefits under subsection (f), mother’s and father’s insurance benefits under subsection (g), and parent’s insurance benefits under subsection (h).”.

SEC. 404. TAX TREATMENT OF ACCOUNTS.

(a) IN GENERAL.—

(1) IN GENERAL.—Subchapter F of chapter 1 of the Internal Revenue Code of 1986 (relating to exempt organizations) is amended by adding at the end the following new part:

“PART IX—PERSONAL SOCIAL SECURITY SAVINGS PROGRAM

“Sec. 530A. Personal social security savings program.

1 **“SEC. 530A. PERSONAL SOCIAL SECURITY SAVINGS PRO-**
2 **GRAM.**

3 “(a) GENERAL RULE.—The Social Security Personal
4 Savings Fund and each Tier III Investment Option are
5 exempt from taxation under this subtitle. Notwithstanding
6 the preceding sentence, sums in a personal social security
7 savings account which are attributable to a Tier III Op-
8 tion shall be subject to the taxes imposed by section 511
9 (relating to imposition of tax on unrelated business income
10 of charitable, etc. organizations).

11 “(b) DISTRIBUTIONS.—

12 “(1) IN GENERAL.—Any qualified distribution
13 from—

14 “(A) amounts credited to a personal social
15 security savings account from the Social Secu-
16 rity Personal Savings Fund or attributable to a
17 Tier III Investment Option, or

18 “(B) a personal social security savings an-
19 nuity,

20 shall not be included in the gross income of the dis-
21 tributee.

22 “(2) QUALIFIED DISTRIBUTION.—For purposes
23 of paragraph (1), the term ‘qualified distribution’
24 means a distribution which meets the requirements
25 of section 258 of the Social Security Act and which

1 is not a guaranty payment (as defined by section
2 259 of such Act).

3 “(c) DEFINITIONS.—For purposes of this section—

4 “(1) PERSONAL SOCIAL SECURITY SAVINGS AC-
5 COUNT.—The term ‘personal social security savings
6 account’ means an account established under section
7 254(a) of the Social Security Act.

8 “(2) PERSONAL SOCIAL SECURITY SAVINGS AN-
9 NUITY.—The term ‘personal social security savings
10 annuity’ means an annuity approved by the Personal
11 Social Security Savings Board under section
12 258(b)(3) of the Social Security Act.

13 “(3) SOCIAL SECURITY PERSONAL SAVINGS
14 FUND.—The term ‘Social Security Personal Savings
15 Fund’ means the Savings Fund established under
16 section 252 of the Social Security Act.

17 “(4) TIER III INVESTMENT OPTION.—The term
18 ‘Tier III Investment Option’ has the meaning given
19 such term by section 251(9) of the Social Security
20 Act.

21 “(d) ESTATE TAX TREATMENT.—No amount shall be
22 includible in the gross estate of any individual for pur-
23 poses of chapter 11 by reason of an interest in the Tier
24 I Investment Fund or the Tier II Investment Fund of the
25 Savings Fund or held under a Tier III Investment Option

1 and which is credited to the personal social security sav-
 2 ings account of the individual.”.

3 (2) CONFORMING AMENDMENT.—Section
 4 86(d)(1)(A) of such Code is amended by inserting
 5 “part A of” after “under”.

6 (3) CLERICAL AMENDMENT.—The table of
 7 parts for subchapter F of chapter 1 of such Code is
 8 amended by adding after the item relating to part
 9 VIII the following new item:

“PART IX. PERSONAL SOCIAL SECURITY SAVINGS PROGRAM.”.

10 (b) GUARANTY PAYMENTS.—Paragraph (1) of sec-
 11 tion 86(d) of the Internal Revenue Act of 1986, as amend-
 12 ed by subsection (a)(2), is amended by striking “or” at
 13 the end of subparagraph (A), by striking the period and
 14 inserting “, or” at the end of subparagraph (B), and by
 15 adding at the end the following new subparagraph:

16 “(C) a guaranty payment under section
 17 259(a), and a payment of an additional amount
 18 under section 259(c), of the Social Security
 19 Act.”.

20 (c) EFFECTIVE DATE.—The amendments made by
 21 this section shall apply to taxable years beginning after
 22 December 31, 2010.

1 **SEC. 405. SELF-LIQUIDATING SOCIAL SECURITY TRANSI-**
2 **TION FUND.**

3 Part B of title II of the Social Security Act (as added
4 by section 101 of this Act) is amended by adding at the
5 end the following new section:

6 **"SEC. 262. SELF-LIQUIDATING SOCIAL SECURITY TRANSI-**
7 **TION FUND.**

8 "(a) **ESTABLISHMENT.**—There is hereby created on
9 the books of the Treasury of the United States a trust
10 fund to be known as the Self-Liquidating Social Security
11 Transition Fund (in this section referred to as the 'Transi-
12 tion Fund').

13 "(b) **BOARD OF TRUSTEES.**—

14 "(1) **ESTABLISHMENT.**—With respect to the
15 Transition Fund, there is hereby created a body to
16 be known as the Board of Trustees of the Transition
17 Fund (in this section referred to as the 'Board of
18 Trustees') composed of the Commissioner of Social
19 Security, the Secretary of the Treasury, and the
20 members of the Personal Social Security Savings
21 Board.

22 "(2) **DUTIES.**—The Board of Trustees shall—

23 "(A) provide for the issuance of obligations
24 by the Transition Fund pursuant to subsection
25 (c),

1 “(B) provide for the receipt and manage-
2 ment of amounts paid into the Transition Fund
3 pursuant to subsection (d),

4 “(C) use all funds paid into the Transition
5 Fund to redeem obligations issued under sub-
6 section (c) as soon as practicable,

7 “(D) report to Congress not later than the
8 first day of April of each year on the operation
9 and status of the Transition Fund during the
10 preceding fiscal year and on its expected oper-
11 ation and status during the current fiscal year
12 and the next 2 fiscal years, and

13 “(E) review the general policies followed in
14 managing the Transition Fund, and recommend
15 changes in such policies, including necessary
16 changes in the provisions of law which govern
17 the way in which the Transition Fund is to be
18 managed.

19 “(3) MEETINGS.—The Board of Trustees shall
20 meet not less frequently than once each calendar
21 year.

22 “(c) ISSUANCE OF TRANSITION FUND BONDS.—

23 “(1) ISSUANCE.—

24 “(A) IN GENERAL.—The purposes for
25 which obligations of the United States may be

1 issued under chapter 31 of title 31, United
2 States Code, are hereby extended to authorize
3 the issuance at par of public-debt obligations by
4 the Transition Fund.

5 “(B) REQUIRED ISSUANCE.—Beginning on
6 January 1, 2011, whenever any obligation held
7 in the Federal Old-Age and Survivors Insurance
8 Trust Fund or the Federal Disability Insurance
9 Trust Fund is repaid from the general fund of
10 the Treasury to either of such Trust Funds, the
11 Transition Fund shall issue an obligation under
12 this subsection in an amount equal to the
13 amount of interest and principal so repaid.

14 “(C) TRANSFER OF PROCEEDS TO GEN-
15 ERAL FUND OF THE TREASURY.—Proceeds
16 from the issuance of any obligation issued
17 under this section shall be transferred to the
18 general fund of the Treasury.

19 “(D) ACCOUNTING.—The debt owed on
20 any obligation issued under this section shall be
21 considered to be debt of the Transition Fund
22 and shall be accounted for in such manner.

23 “(2) MATURITIES AND INTEREST RATE.—Such
24 obligations issued by the Transition Fund for pur-
25 chase by the public shall have maturities fixed with

1 due regard for the needs of the Transition Fund and
2 shall bear interest at a rate equal to the average
3 market yield (computed by the Secretary of the
4 Treasury on the basis of market quotations as of the
5 end of the calendar month next preceding the date
6 of such issue) on all marketable interest-bearing ob-
7 ligations of the United States then forming a part
8 of the public debt which are not due or callable until
9 after the expiration of 4 years from the end of such
10 calendar month, except that where such average
11 market yield is not a multiple of one-eighth of 1 per
12 centum, the rate of interest on such obligations shall
13 be the multiple of one-eighth of 1 per centum near-
14 est such market yield.

15 “(3) REPAYMENT OF OBLIGATIONS.—Obliga-
16 tions issued under this subsection may be redeemed
17 only by funds in the Transition Fund.

18 “(d) DEPOSIT OF OASDI TRUST FUND SURPLUS.—

19 “(1) IN GENERAL.—There are appropriated to
20 the Transition Fund for the fiscal year beginning in
21 2032, and for each fiscal year thereafter, out of any
22 moneys in the Federal Old-Age and Survivors Insur-
23 ance Trust Fund, amounts equivalent to the OASDI
24 trust fund surplus (as defined in paragraph (2)) for
25 the preceding fiscal year.

“(2) TRANSFERS BASED ON ESTIMATES.—The amounts appropriated by paragraph (1) shall be transferred from time to time from the Federal Old-Age and Survivors Insurance Trust Fund to the Transition Fund, such amounts to be determined on the basis of estimates by the Commissioner of Social Security. Proper adjustments shall be made in amounts subsequently transferred to the extent prior estimates were in excess of or were less than such surplus.

“(3) OASDI TRUST FUND SURPLUS DEFINED.—In this section, the term ‘OASDI trust fund surplus’ for a fiscal year means the dollar amount by which the Federal Old-Age and Survivors Insurance Trust Fund could be reduced as of the end of such fiscal year so as to result in an OASDI trust fund ratio (as defined in section 201(p)(4)) for such fiscal year equal to 125 percent.

“(4) RULE OF CONSTRUCTION.—This section shall not be construed to require redemption of obligations of the Trust Fund for the purpose of making transfers to the Transition Fund under this section or for any other purpose other than to provide for payment of benefits under part A of title II of the Social Security Act.

1 “(e) REDEMPTION OF OBLIGATIONS UPON DEPOSIT
2 OF FUNDS.—Obligations issued under subsection (c) may
3 be redeemed only by funds in the Transition Fund. The
4 Board of Trustees shall provide for the redemption of such
5 obligations as soon as possible with funds deposited into
6 the Transition Fund pursuant to subsection (d).

7 “(f) SUNSET.—On the first date as of which all of
8 the obligations issued under subsection (c) have been re-
9 deemed, any balance remaining in the Transition Fund
10 as of such date shall be deposited in the Federal Old-Age
11 and Survivors Insurance Trust Fund, the terms of the
12 Board of Trustees shall end, the Transition Fund shall
13 cease to exist, and this section shall be repealed.”.

14 **SEC. 406. BUDGETARY TREATMENT OF SOCIAL SECURITY.**

15 (a) IN GENERAL.—Section 710 of the Social Security
16 Act (42 U.S.C. 911) is amended to read as follows:

17 “BUDGETARY TREATMENT OF SOCIAL SECURITY

18 “SEC. 710.

19 “Notwithstanding any other provision of law and ex-
20 cept as provided in subsection (b), the receipts and dis-
21 bursements shall be treated in the same manner as section
22 13301 of the Budget Enforcement Act of 1990.”.

23 (b) EFFECTIVE DATE.—The amendments made by
24 this section shall apply with respect to fiscal years begin-
25 ning on or after October 1, 2010.

**SEC. 407. ACCOUNTING FOR THE OLD-AGE, SURVIVORS,
AND DISABILITY INSURANCE PROGRAM AND
THE PERSONAL SOCIAL SECURITY SAVINGS
PROGRAM.**

Title VII of the Social Security Act is amended by inserting after section 705 (42 U.S.C. 906) the following new section:

“ACCOUNTING FOR THE OLD-AGE, SURVIVORS, AND DIS-
ABILITY INSURANCE PROGRAM AND THE PERSONAL
SOCIAL SECURITY SAVINGS PROGRAM

“Social Security Lockbox Budget

“SEC. 706. (a) At the time of the transmittal to the Congress by the President of the budget of the United States Government, the President shall transmit to each House of the Congress a separate report (to be known as the ‘Social Security Lockbox Budget’) detailing the performance during the preceding fiscal year of each of the accounts established under subsection (b). Such report shall set forth, as determined as of the end of the year—

“(1) the amount of the balance of each account,

“(2) the amount of the total charges and the amount of the total credits to each account for the year, and

“(3) the amount of the total for the year of each category of charges and credits itemized in subsection (b).

1 “Establishment of Accounts

“(b) For purposes of accounting for certain receipts and disbursement of the Treasury of the United States in connection with the Old-Age, Survivors, and Disability Insurance Program under part A of title II of the Social Security Act and the Personal Security Savings Program under part B of such title, the Secretary of the Treasury shall establish and maintain a Social Security Part A Account, a Social Security Part B Account, and a Self-Liquidating Social Security Transition Fund Account.

“Credits and Charges to the Social Security Part A
Account

13 “(c)(1) For each fiscal year, the Social Security Part
14 A Account shall be credited with the sum of—

“(A) all receipts during the year by the Federal Old-Age and Survivors Insurance Trust Fund and the Federal Disability Insurance Trust Fund under section 201 (including amounts received as interest on notes and obligations purchased by the Trust Funds under section 201(d) of such Act, and excluding amounts received in redemption of such notes and obligations and amounts received by either such Trust Fund as transfers from the other such Trust Fund), and

“(B) all receipts during the year by the Federal Old-Age and Survivors Insurance Trust Fund and the Federal Disability Insurance Trust Fund under section 121(e) of the Social Security Amendments of 1983 (relating to appropriation of amounts equivalent to taxes on social security benefits) (42 U.S.C. 401 note).

“(2) For each fiscal year, the Social Security Part A Account shall be charged with the sum of—

“(A) all benefits paid during the year from the Federal Old-Age and Survivors Insurance Trust Fund and the Federal Disability Insurance Trust Fund under part A of title II of the Social Security Act,

“(B) all redirected social security contributions transferred during the year to the Social Security Personal Savings Fund under section 252(b),

“(C) all other expenditures during the year from the Trust Funds under part A of title II (excluding amounts expended as transfers by either such Trust Fund to the other such Trust Fund and amounts paid for the purchase of notes and obligations under section 201(d)), and

“(D) all transfers from the Federal Old-Age and Survivors Insurance Trust Fund to the Self-Liq-

1 updating Social Security Transition Fund under sec-
2 tion 262(d).

“Charges and Credits to the Social Security Part B
Account

5 “(d)(1) For each fiscal year, the Social Security Part
6 B Account shall be credited with—

7 “(A) all redirected social security contributions
8 transferred during the year to the Personal Social
9 Security Savings Fund under section 252(b) of the
10 Social Security Act, and

“(B) any net increase in the Tier I Investment Fund attributable to investment for the fiscal year, any net increase in the Tier II Investment Fund attributable to investment for the fiscal year, and the total amount of any net increases in Tier III Investment Options attributable to investment for the fiscal year.

18 “(2) For each fiscal year, the Social Security Part
19 B Account shall be charged with—

“(A) all administrative costs incurred for the
fiscal year with respect to the Tier I Investment
Fund, the Tier II Investment Fund, and the Tier III
Investment Options,

24 “(B) any net decrease in the Tier I Investment
25 Fund attributable to investment for the fiscal year,

any net decrease in the Tier II Investment Fund attributable to investment for the fiscal year, and the total amount of any net decreases in Tier III Investment Options attributable to investment for the fiscal year, and

“(C) annuity payments made during the year under section 258 from the Annuity Reserve Account in the Savings Fund.

“Charges and Credits to the Self-Liquidating Social Security Transition Fund Account

“(e)(1) For each fiscal year, the Self-Liquidating Social Security Transition Account shall be credited with—

“(A) all transfers to the Transition Fund from the Federal Old-Age and Survivors Insurance Trust Fund under section 262(b), and

“(B) all amounts expended during the fiscal year from the Trust Funds in the redemption under section 262(e) of obligations issued by the Transition fund under section 262(c).

“(2) For each fiscal year, the Self-Liquidating Social Security Transition Fund Account shall be charged with the total amount of obligations issued during the fiscal year by the Transition Fund under section 262(c)”.

1 **SEC. 408. PROGRESSIVE INDEXING OF BENEFITS FOR OLD-**
2 **AGE, WIFE'S, AND HUSBAND'S INSURANCE**
3 **BENEFITS.**

4 (a) IN GENERAL.—Section 215(a) of the Social Secu-
5 rity Act (42 U.S.C. 415(a)) is amended—

6 (1) by striking “The” in paragraph (1)(A) and
7 inserting “In the case of any benefit other than an
8 applicable benefit to which paragraph (2) applies,
9 the”, and

10 (2) by redesignating paragraphs (2) through
11 (7) as paragraphs (3) through (8), respectively, and
12 by inserting after paragraph (1) the following new
13 paragraph:

14 “(2)(A) In the case of an applicable benefit with re-
15 spect to any individual who initially becomes eligible for
16 old-age insurance benefits or who dies (before becoming
17 eligible for such benefits) in calendar year 2016 or later,
18 the primary insurance amount of the individual shall be
19 equal to the sum of—

20 “(i) 90 percent of the individual’s average in-
21 dexed monthly earning (determined under subsection
22 (b)) to the extent that such earnings do not exceed
23 the amount established for purposes of paragraph
24 (1)(A)(i) by paragraph (1)(B);

25 “(ii) 32 percent of the individual’s average in-
26 dexed monthly earnings to the extent that such

1 earnings exceed the amount established for purposes
2 of paragraph (1)(A)(i) by paragraph (1)(B) but do
3 not exceed the amount established for purposes of
4 this clause by subparagraph (B);

5 “(iii) 32 percent (reduced as provided in sub-
6 paragraph (C)) of the individual’s average indexed
7 monthly earnings to the extent that such earnings
8 exceed the amount established for purposes of clause
9 (ii) but do not exceed the amount established for
10 purposes of paragraph (1)(A)(ii) by paragraph
11 (1)(B); and

12 “(iv) 15 percent (reduced as provided in sub-
13 paragraph (C)) of the individual’s average indexed
14 monthly earnings to the extent that such earnings
15 exceed the amount established for purposes of para-
16 graph (1)(A)(ii) by paragraph (1)(B).

17 “(B)(i) For purposes of subparagraph (A)(ii), the
18 amount established under this subparagraph for calendar
19 year 2016 shall be the level of average indexed monthly
20 earnings determined by the Chief Actuary of the Social
21 Security Administration under clause (ii) as being at the
22 30th percentile for the period of calendar years 2005
23 through 2007.

1 “(ii) For purposes of clause (i), the average indexed
2 monthly earnings for the period of calendar years 2005
3 through 2007 shall be determined by—

4 “(I) determining the average indexed monthly
5 earnings for each individual who initially became eli-
6 gible for old-age insurance benefits or who died (be-
7 fore becoming eligible for such benefits) during such
8 period, except that in determining such average in-
9 dexed monthly earnings under subsection (b), sub-
10 section (b)(3)(A)(ii)(I) shall be applied by sub-
11 stituting calendar year 2002 for the second calendar
12 year described in such subsection; and

13 “(II) multiplying the amount determined for
14 each individual under subclause (I) by the quotient
15 obtained by dividing the national average wage index
16 (as defined in section 209(k)(1)) for the calendar
17 year 2014 by such index for the calendar year 2002.

18 “(iii) For purposes of subparagraph (A)(ii), the
19 amount established under this subparagraph for any cal-
20 endar year after 2016 shall be equal to the product of
21 the amount in effect under clause (i) with respect to cal-
22 endar year 2016 and the quotient obtained by dividing—

23 “(I) the national average wage index (as de-
24 fined in section 209(k)(1)) for the second calendar

1 year preceding the calendar year for which the de-
2 termination is being made, by

3 “(II) the national average wage index (as so de-
4 fined) for 2014.

5 “(iv) The amount established under this subpara-
6 graph for any calendar year shall be rounded to the near-
7 est \$1, except that any amount so established which is
8 a multiple of \$0.50 but not of \$1 shall be rounded to the
9 next higher \$1.

10 “(C)(i) Except as provided in clause (ii), in the case
11 of any calendar year after 2015, each of the percentages
12 to which this subparagraph applies by reason of clauses
13 (iii) or (iv) of subparagraph (A) shall be a percentage
14 equal to such percentage multiplied by the quotient ob-
15 tained by dividing—

16 “(I) the difference of the maximum CPI-in-
17 dexed benefit amount for such year over the amount
18 determined under this paragraph for an individual
19 whose average indexed monthly earnings are equal
20 to the amount established for purposes of subpara-
21 graph (A)(ii) for such year, by

22 “(II) the difference of the maximum wage-in-
23 dexed benefit amount for such year over the amount
24 determined under this paragraph for an individual
25 whose average indexed monthly earnings are equal

1 to the amount established for purposes of subpara-
2 graph (A)(ii) for such year.

3 “(ii)(I) In the case of any calendar year which is a
4 positive balance year, clause (i) shall not apply and each
5 of the percentages to which this subparagraph applies by
6 reason of clause (iii) or (iv) of subparagraph (B) shall be
7 a percentage equal to the percentage determined under
8 this subparagraph for the preceding year (determined
9 after the application of this subparagraph).

10 “(II) In the case of any calendar year after a positive
11 balance year which is not a positive balance year, this sub-
12 paragraph shall be applied by substituting ‘the second cal-
13 endar year preceding the most recent positive balance
14 year’ for ‘2013’ each place it appears in clause (iv).

15 “(iii) For purposes of clause (i), the maximum wage-
16 indexed benefit amount for any calendar year shall be
17 equal to the amount determined under this paragraph (de-
18 termined without regard to any reduction under this sub-
19 paragraph) for an individual with wages paid in and self-
20 employment income credited to each computation base
21 year in an amount equal to the contribution and benefit
22 base for each calendar year.

23 “(iv) For purposes of clause (i), the maximum CPI-
24 indexed benefit amount for any calendar year shall be an

1 amount equal to the amount determined under clause (iii)
2 for such year multiplied by a fraction—

3 “(I) the numerator of which is the ratio (round-
4 ed to the nearest one-thousandth of 1 percent) of
5 the Consumer Price Index for the second preceding
6 year to such index for 2013; and

7 “(II) the denominator of which is the ratio
8 (rounded to the nearest one-thousandth of 1 per-
9 cent) of the national wage index (as defined in sec-
10 tion 209(k)(1)) for the second year preceding such
11 year to such index for 2013.

12 “(v)(I) For purposes of this subparagraph, a positive
13 balance year is a calendar year following any calendar year
14 after 2080 for which the Chief Actuary of the Social Secu-
15 rity Administration certifies to the Secretary of the Treas-
16 ury and the Congress that the combined balance ratio of
17 the Federal Old-Age and Survivors Trust Fund and the
18 Federal Disability Insurance Trust Fund is not less than
19 100 percent for such year.

20 “(II) For purposes of subclause (I), the combined
21 balance ratio of the Federal Old-Age and Survivors Trust
22 Fund and the Federal Disability Insurance Trust Fund
23 for any calendar year is the ratio of the combined balance
24 of such Trust Funds as of the last day of such calendar
25 year (reduced by any transfer made pursuant to section

1 201(o) in such calendar year) to the amount estimated
2 by the Commissioner of Social Security under section
3 201(l)(3)(B)(iii)(II) to be paid from such Trust Funds
4 during the calendar year following such calendar year for
5 all purposes authorized by section 201 (determined as if
6 such following calendar year were a positive balance year).

7 “(D) For purposes of this paragraph, rules similar
8 to the rules of subparagraphs (C) and (D) of paragraph
9 (1) shall apply.

10 “(E) For purposes of this paragraph, the term ‘appli-
11 cable benefit’ means any benefit under section 202 other
12 than—

13 “(i) a child’s insurance benefit under section
14 202(d) with respect to a child of an individual who
15 has died;

16 “(ii) a widow’s insurance benefit under section
17 202(e) with respect to a widow who has not attained
18 age 60 and is under a disability (as defined in sec-
19 tion 223(d)) which began before the end of the pe-
20 riod specified in section 202(e)(4);

21 “(iii) a widower’s insurance benefit under sec-
22 tion 202(f) with respect to a widower who has not
23 attained age 60 and is under a disability (as defined
24 in section 223(d)) which began before the end of the
25 period specified in section 202(f)(4); and

“(iv) a mother’s and father’s insurance benefit under section 202(g).”.

(b) TREATMENT OF DISABLED BENEFICIARIES.—

Section 215(a) of such Act (as amended by subsection (a)) is amended further by adding at the end the following new paragraph:

“(9)(A) Notwithstanding the preceding provisions of this subsection, in the case of an individual who has or has had a period of disability and who initially becomes eligible for old-age insurance benefits or who dies (before becoming eligible for such benefits) in any calendar year in or after 2016, the primary insurance amount of such individual shall be the sum of—

“(i) the amount determined under subparagraph (B); and

“(ii) the product derived by multiplying—

“(I) the excess of the amount determined under subparagraph (C) over the amount determined under subparagraph (B), by

“(II) the adjustment factor for such individual determined under subparagraph (D).

“(B) The amount determined under this subparagraph is the amount of such individual’s primary insurance amount as determined under this section without regard to this paragraph.

1 “(C) The amount determined under this subpara-
2 graph is the amount of such individual’s primary insur-
3 ance amount as determined under this section as in effect
4 with respect to individuals becoming eligible for old-age
5 or disability insurance benefits under section 202(a) on
6 the date of the enactment of the Social Security Personal
7 Savings Guarantee and Prosperity Act of 2008.

8 “(D) The adjustment factor determined under this
9 subparagraph for any individual is the ratio (not greater
10 than 1) of—

11 “(i) the total number of months during which
12 such individual is under a disability (as defined in
13 section 223(d)) during the period beginning on the
14 date the individual attains age 22 and ending on the
15 first day of such individual’s first month of eligibility
16 for old-age insurance benefits under section 202(a)
17 (or, if earlier, the month of such individual’s death),
18 to

19 “(ii) the number of months during the period
20 beginning on the date the individual attains age 22
21 and ending on the first day of such individual’s first
22 month of eligibility for old-age insurance benefits
23 under section 202(a) (or, if earlier, the month of
24 such individual’s death).”.

25 (c) CONFORMING AMENDMENTS.—

(1) Subsections (e)(2)(B)(i)(I) and (f)(2)(B)(i)(I) of section 202 of the Social Security Act are each amended by inserting “or section 215(a)(2)(B)(iii)” after “section 215(a)(1)(B)(i) and (ii)”.

(2) Section 203(a)(10) of such Act is amended—

(A) in subparagraph (A)(i), by striking “215(a)(2)(B)(i)” and inserting “215(a)(3)(B)(i)”;

(B) in subparagraph (A)(ii), by striking “215(a)(2)(C)” and inserting “215(a)(3)(C)”;

and

(C) in subparagraph (B)(ii), by striking “215(a)(2)” and inserting “215(a)(3)”.

(3) Section 209(k)(1) of such Act is amended by inserting “215(a)(2)(B), 215(a)(2)(C),” after “215(a)(1)(D),”.

(4) Section 215(a) of such Act is amended—

(A) in paragraph (4)(A), as redesignated by paragraph (2), by striking “paragraph (4)” and inserting “paragraph (5)”;

(B) in paragraph (4)(B), as redesignated by paragraph (2), by striking “paragraph (2)(A)” and inserting “paragraph (3)(A)”;

1 (C) in paragraph (5), as redesignated by
2 paragraph (2), by striking “paragraph (3)(A)”
3 and inserting “paragraph (4)(A)”;

4 (D) in paragraph (6)(A), as redesignated
5 by paragraph (2), by striking “paragraph
6 (4)(B)” and inserting “paragraph (5)(B)”;

7 (E) in paragraph (8)(B)(ii)(I), as redesignated
8 by paragraph (2), by striking “paragraph
9 (3)(B)” and inserting “paragraph (4)(B)”.

10 (5) Section 215(d)(3) of such Act is amended—

11 (A) by striking “paragraph (4)(B)(ii)” and
12 inserting “paragraph (5)(B)(ii)”;

13 (B) by striking “subsection (a)(7)(C)” and
14 inserting “subsection (a)(8)(C)”.

15 (6) Subsection 215(f) of such Act is amended—

16 (A) in paragraph (2)(B), by striking “sub-
17 section (a)(4)(B)” and inserting “subsection
18 (a)(5)(B)”;

19 (B) in paragraph (7), by striking “sub-
20 section (a)(4)(B)” and inserting “subsection
21 (a)(5)(B)”, and by striking “subsection (a)(6)”
22 and inserting “subsection (a)(7)”;

23 (C) in paragraph (9)(A)—

24 (i) by striking “subsection (a)(7)(A)”
25 and inserting “subsection (a)(8)(A)”;

(ii) by striking “subsection (a)(7)(C)”
and inserting “subsection (a)(8)(C)”; and
(D) in paragraph (9)(B), by striking “sub-
section (a)(7)” each place it appears and insert-
ing “subsection (a)(8)”.

SEC. 409. ENHANCEMENTS TO PART A BENEFITS.

(a) CPI INDEXING IN PART A BENEFIT FORMULA.—

Section 215(a)(1)(B) of the Social Security Act (42
U.S.C. 415(a)(1)(B)) is amended—

(1) by redesignating clause (iii) as clause (iv);

(2) in clause (ii), by inserting “and before
2016” after “1979”;

(3) in clause (iv) (as so redesignated), by in-
serting “or (iii)” after “clause (ii)”; and

(4) by inserting after clause (ii) the following
new clause:

“(iii) For individuals who initially become eligible for
old-age or disability insurance benefits, or who die (before
becoming eligible for such benefits), in any calendar year
after 2015, each of the amounts so established shall be
equal to the product of the corresponding amount estab-
lished with respect to the calendar year 2015 under clause
(ii) of this subparagraph and the quotient obtained by di-
viding—

1 “(I) the Consumer Price Index for the second
2 calendar year preceding the calendar year for which
3 the determination is made, by

4 “(II) the Consumer Price Index for 2013.

5 For purposes of this clause, the term ‘Consumer Price
6 Index’ for a calendar year means the arithmetical mean
7 of the Consumer Price Index (within the meaning of such
8 term as used in subsection (i)) for the 12 months in such
9 calendar year.”.

10 (b) ENHANCED PART A BENEFIT LEVELS FOR LOW
11 EARNERS.—Section 215(a) of such Act (as amended by
12 section 408) is amended by adding at the end the following
13 new paragraph:

14 “(10)(A) In the case of any individual who initially
15 becomes eligible for old-age or disability insurance bene-
16 fits, or who dies (before becoming eligible for such bene-
17 fits), in any calendar year after 2015 and whose average
18 indexed monthly earnings is less than twice the 35-year
19 low earner AIME for such calendar year, each primary
20 insurance amount otherwise determined under paragraph
21 (1) or (2) shall be the product of—

22 “(i) such primary insurance amount as so de-
23 termined, and

24 “(ii) the applicable adjustment factor for such
25 individual.

1 “(B) For purposes of this paragraph, the applicable
 2 adjustment factor for an individual is 100 percent plus
 3 the product of—

4 “(i) the applicable percentage for the calendar
 5 year,

6 “(ii) the applicable AIME factor, and

7 “(iii) the applicable coverage factor.

8 “(C) For purposes of subparagraph (B)(i), the appli-
 9 cable percentage for a calendar year is the percentage set
 10 forth in connection with such calendar year in the fol-
 11 lowing table:

“If the calendar year is:	The percentage is:
2016	4.04
2017	8.08
2018	12.12
2019	16.16
2020	20.20
2021	24.24
2022	28.28
2023	32.32
2024	36.36
2025 or thereafter	40.40.

12 “(D) For purposes of subparagraph (B)(ii)—

13 “(i) in any case in which an individual’s aver-
 14 age indexed monthly earnings is less than or equal
 15 to the 30-year low earner AIME for the calendar
 16 year referred to in subparagraph (A), the applicable
 17 AIME factor in connection with the individual for
 18 the calendar year is 1,

19 “(ii) in any case in which an individual’s AIME
 20 is greater than the 30-year low earner AIME for the

1 calendar year referred to in subparagraph (A) and
2 less than twice the 35-year low earner AIME for the
3 calendar year, the applicable AIME factor in connec-
4 tion with the individual for the calendar year is the
5 quotient derived by dividing—

6 “(I) the excess of twice the 35-year low
7 earner AIME for the calendar year over the in-
8 dividual’s average indexed monthly earnings, by

9 “(II) the excess of twice the 35-year low
10 earner AIME for the calendar year over the 30-
11 year low earner AIME for the calendar year,
12 and

13 “(iii) in any case in which an individual’s aver-
14 age indexed monthly earnings is greater than or
15 equal to twice the 35-year low earner AIME for the
16 calendar year referred to in subparagraph (A), the
17 applicable AIME factor in connection with an indi-
18 vidual for the calendar year is 0.

19 “(E) For purposes of subparagraph (B)(iii)—

20 “(i) in any case in which the number of an indi-
21 vidual’s quarters of coverage earned prior to the
22 date on which the individual became eligible or died
23 as described in subparagraph (A) is less than or
24 equal to twice the number of elapsed years with re-

1 spect to the individual, the applicable coverage factor
2 in connection with the individual is 0,

3 “(ii) in any case in which the number of an in-
4 dividual’s quarters of coverage earned prior to the
5 date on which the individual became eligible or died
6 as described in subparagraph (A) is greater than
7 twice the number of elapsed years with respect to
8 the individual and less than three times the number
9 of elapsed years with respect to the individual, the
10 applicable coverage factor in connection with the in-
11 dividual is 1 plus the quotient derived by dividing—

12 “(I) the excess of the number of the indi-
13 vidual’s quarters of coverage over 3 times the
14 number of elapsed years with respect to the in-
15 dividual, by

16 “(II) the number of elapsed years with re-
17 spect to the individual, and

18 “(iii) in any case in which the number of an in-
19 dividual’s quarters of coverage earned prior to the
20 date on which the individual became eligible or died
21 as described in subparagraph (A) is greater than or
22 equal to 3 times the number of elapsed years with
23 respect to the individual, the applicable coverage fac-
24 tor in connection with the individual is 1.

25 “(F) For purposes of this paragraph—

1 “(i) The term ‘30-year low earner AIME’ for a
2 calendar year means the amount which would be the
3 average indexed monthly earnings of an individual—

4 “(I) whose benefit computation years are
5 the preceding 30 calendar years, and

6 “(II) whose primary insurance amount is
7 based solely on wages earned during such cal-
8 endar years for 40 hours per week at an hourly
9 rate equivalent to the minimum wage required
10 under section 6 of the Fair Labor Standards
11 Act of 1938 (29 U.S.C. 206) at the time such
12 wages were earned.

13 “(ii) The term ‘35-year low earner AIME’ for
14 a calendar year means the amount which would be
15 the average indexed monthly earnings of an indi-
16 vidual—

17 “(I) whose benefit computation years are
18 the preceding 35 calendar years, and

19 “(II) whose primary insurance amount is
20 based solely on wages earned during such cal-
21 endar years for 40 hours per week at an hourly
22 rate equivalent to the minimum wage required
23 under section 6 of the Fair Labor Standards
24 Act of 1938 (29 U.S.C. 206) at the time such
25 wages were earned

“(iii) The term ‘number of elapsed years’ has the meaning provided in subsection (b)(2)(B)(iii).”.

**SEC. 410. ADJUSTMENTS TO SCHEDULE FOR INCREASES IN
NORMAL RETIREMENT AGE.**

(a) COMPLETION OF PHASE-IN OF NORMAL RETIREMENT AGE TO AGE 67 BY 2021.—Section 216(l) of the Social Security Act (42 U.S.C. 416(l)) is amended—

(1) in paragraph (1)(C), by striking “2017” and inserting “2016”;

(2) in paragraph (1)(D), by striking “2016” and inserting “2015”, and by striking “2022” and inserting “2021”;

(3) in paragraph (1)(E), by striking “2021” and inserting “2020”; and

(4) in paragraph (3)(B), by striking “2017” and inserting “2016”, by striking “2021” and inserting “2020”, and by striking “2017” and inserting “2016”.

(b) ADJUSTMENTS TO NORMAL RETIREMENT AGE AFTER 2021.—Section 216(l) of such Act (as amended by subsection (a)) is amended further—

(1) in paragraph (1)(E), by inserting “and before January 1, 2022,” after “2020,” and by striking “age.” and inserting “age; and” ;

1 (2) in paragraph (1), by adding after subpara-
2 graph (E) the following new subparagraph:

3 “(F) with respect to an individual who attains
4 early retirement age after December 31, 2121, 67
5 years of age plus the number of months in the age
6 increase factor (as determined under paragraph (3))
7 for the calendar year in which such individual at-
8 tains early retirement age.”; and

9 (3) in paragraph (3), by adding at the end the
10 following new subparagraph:

11 “(C) The Commissioner of Social Security shall
12 determine (using reasonable actuarial assumptions)
13 and publish on or before November 1 of each cal-
14 endar year after 2020 the number of months
15 (rounded, if not a multiple of one month, to the next
16 lower multiple of one month) by which the life ex-
17 pectancy as of October 1 of such calendar year of
18 an individual attaining early retirement age on such
19 October 1 exceeds the life expectancy as of October
20 1, 2020, of an individual attaining early retirement
21 age on October 1, 2020. With respect to an indi-
22 vidual who attains early retirement age in the cal-
23 endar year following any calendar year in which a
24 determination is made under this subparagraph, the
25 age increase factor shall be the number of months

determined under this subparagraph as of October 1 of such calendar year in which such determination is made.”.

TITLE V—SIMPLIFIED INCOME TAX

SEC. 501. SHORT TITLE.

This title may be cited as the “Taxpayer Choice Act of 2008”.

SEC. 502. REPEAL OF ALTERNATIVE MINIMUM TAX FOR NONCORPORATE TAXPAYERS.

(a) IN GENERAL.—Section 55(a) of the Internal Revenue Code of 1986 (relating to alternative minimum tax imposed) is amended by adding at the end the following new flush sentence:

“In the case of a taxpayer other than a corporation, no tax shall be imposed by this section for any taxable year beginning after December 31, 2008, and the tentative minimum tax of any taxpayer other than a corporation for any such taxable year shall be zero for purposes of this title.”.

(b) CONFORMING AMENDMENTS.—

(1) Section 26(c) of such Code is amended by striking “the term ‘tentative minimum tax’ means the amount determined under section 55(b)(1)” and inserting “the tentative minimum tax is zero.”.

1 (2) Section 911(f)(2) of such Code is amended
2 to read as follows:

3 “(2) the tentative minimum tax under section
4 55 for the taxable year shall be zero.”.

5 (c) EFFECTIVE DATE.—The amendments made by
6 this section shall apply to taxable years beginning after
7 December 31, 2008.

8 **SEC. 503. SIMPLIFIED INCOME TAX SYSTEM.**

9 (a) IN GENERAL.—Part I of subchapter A of chapter
10 1 of the Internal Revenue Code of 1986 (relating to tax
11 on individuals) is amended by redesignating section 5 as
12 section 6 and by inserting after section 4 the following
13 new section:

14 **“SEC. 5. SIMPLIFIED INCOME TAX SYSTEM.**

15 “(a) ELECTION.—

16 “(1) IN GENERAL.—A taxpayer other than a
17 corporation may elect in accordance with this sub-
18 section to be subject to the tax imposed by this sec-
19 tion in lieu of the tax imposed by section 1 for a tax-
20 able year and all subsequent taxable years.

21 “(2) EFFECT OF ELECTION.—For purposes of
22 this title, if an election is in effect under paragraph
23 (1) for any taxable year, the tax imposed by this sec-
24 tion shall be treated as the tax imposed by section
25 1 for the taxable year and, except as provided by

sections 31 and 36, no amount shall be allowed as a credit against such tax for the taxable year.

“(3) ELECTION.—

“(A) IN GENERAL.—

“(i) IN GENERAL.—Except as provided in clause (ii) of this subparagraph and clauses (ii) and (iii) of subparagraph (B), the election under paragraph (1) may only be made with respect to any taxable year beginning before January 1, 2018, on a timely filed return for the first taxable year for which the election applies.

“(ii) NEW TAXPAYERS.—In the case of an individual with no tax liability under this title before January 1, 2018, the election under paragraph (1) may only be made for the first taxable year beginning after December 31, 2017, for which such individual has tax liability under this title.

“(B) EFFECT OF ELECTION.—

“(i) IN GENERAL.—Except as provided in clauses (ii) and (iii), the election under paragraph (1), once made, shall be irrevocable.

1 “(ii) ONE-TIME REVOCATION OF
2 ELECTION.—A taxpayer may revoke an
3 election under paragraph (1) for a taxable
4 year and all subsequent taxable years. The
5 preceding sentence shall not apply if the
6 taxpayer has made a revocation under such
7 sentence for any prior taxable year.

8 “(iii) FILING STATUS CHANGES DUE
9 TO MAJOR LIFE EVENTS.—In the case of
10 any major life event described in clause
11 (iv), a taxpayer may make an election
12 under paragraph (1) or revoke such an
13 election under clause (ii). Any such election
14 or revocation shall apply for the taxable
15 year for which made and all subsequent
16 taxable years until the taxpayer makes an
17 election under the preceding sentence for
18 any subsequent (and all succeeding) tax-
19 able year.

20 “(iv) MAJOR LIFE EVENT.—For pur-
21 poses of clause (iii), a major life event de-
22 scribed in this clause is marriage, divorce,
23 and death.

24 “(b) TAX IMPOSED.—

“(1) MARRIED INDIVIDUALS AND SURVIVING SPOUSES.—In the case of a taxpayer for whom an election under subsection (a) is in effect and who is a married individual (as defined in section 7703) who makes a single return jointly with his spouse under section 6013 or a surviving spouse (as defined in section 2(a)), there is hereby imposed on the alternative taxable income of such individual a tax determined in accordance with the following table:

“If taxable income is:	The tax is:
Not over \$100,000	10% of alternative taxable income.
Over \$100,000	\$10,000, plus 25% of the excess over \$100,000.

“(2) UNMARRIED INDIVIDUALS (OTHER THAN SURVIVING SPOUSES).—In the case of a taxpayer for whom an election under subsection (a) is in effect and who is not described in paragraph (1), there is hereby imposed on the alternative taxable income of such individual a tax determined in accordance with the following table:

“If taxable income is:	The tax is:
Not over \$50,000	10% of alternative taxable income.
Over \$50,000	\$5,000, plus 25% of the excess over \$50,000.

“(c) ALTERNATIVE TAXABLE INCOME.—For purposes of this section—

“(1) IN GENERAL.—The term ‘alternative taxable income’ means—

“(A) gross income,

1 “(B) the amount excluded from income
2 under section 139C for capital gains, dividends,
3 and interest, minus

4 “(C) the sum of—

5 “(i) the personal exemption,

6 “(ii) the dependent allowance, plus

7 “(iii) the alternative standard deduc-
8 tion.

9 “(2) PERSONAL EXEMPTION.—The personal ex-
10 emption is—

11 “(A) 200 percent of the dollar amount in
12 effect under subparagraph (B) in the case of—

13 “(i) a joint return, or

14 “(ii) a surviving spouse (as defined in
15 section 2(a)), and

16 “(B) \$3,500 in the case of an individual—

17 “(i) who is not married and is not a
18 surviving spouse, or

19 “(ii) who is a married individual filing
20 a separate return.

21 “(3) DEPENDENT ALLOWANCE.—The depend-
22 ent allowance is \$3,500 for each dependent (as de-
23 fined in section 152).

24 “(4) ALTERNATIVE STANDARD DEDUCTION.—
25 The alternative standard deduction means—

1 “(A) \$25,000 in the case of—

2 “(i) a joint return, or

3 “(ii) a surviving spouse (as defined in
4 section 2(a)), and

5 “(B) \$12,500 in the case of an indi-
6 vidual—

7 “(i) who is not married and is not a
8 surviving spouse, or

9 “(ii) who is a married individual filing
10 a separate return.

11 “(d) INFLATION ADJUSTMENTS.—

12 “(1) IN GENERAL.—In the case of any taxable
13 year beginning in a calendar year after 2008, each
14 of the dollar amounts for the rate brackets in sub-
15 section (b) and each of the dollar amounts in sub-
16 section (d)(2)(B), (d)(3), and (d)(4) shall be in-
17 creased by an amount equal to—

18 “(A) such dollar amount, multiplied by

19 “(B) the cost-of-living adjustment deter-
20 mined under section 1(f)(3) for the calendar
21 year in which the taxable year begins, by sub-
22 stituting ‘calendar year 2007’ for ‘calendar year
23 1992’ in subparagraph (B) thereof.

24 “(2) ROUNDING.—If any amount as adjusted
25 under clause (i) is not a multiple of \$100, such

1 amount shall be rounded to the nearest multiple of
2 \$100.”.

3 (b) CONFORMING AMENDMENT.—The table of sec-
4 tions for part I of subchapter A of chapter 1 of such Code
5 is amended by striking the item relating to section 5 and
6 inserting after the item relating to section 4 the following:

“Sec. 5. Simplified income tax System.

“Sec. 6. Cross references relating to tax on individuals.”.

7 (c) EFFECTIVE DATE.—The amendments made by
8 this section shall apply to taxable years beginning after
9 December 31, 2008.

10 **SEC. 504. EXCLUSION FOR CAPITAL GAINS, DIVIDENDS,**
11 **AND INTEREST.**

12 (a) IN GENERAL.—Part III of subchapter B of chap-
13 ter 1 of the Internal Revenue Code of 1986 (relating to
14 items specifically excluded from gross income) is amended
15 by inserting after section 139B the following new section:

16 **“SEC. 139C. CAPITAL GAINS, DIVIDENDS, AND INTEREST.**

17 “(a) EXCLUSION.—Gross income does not include
18 amounts received by an individual as net capital gains,
19 qualified dividends, and interest.

20 “(b) QUALIFIED DIVIDENDS.—For purposes of this
21 section—

22 “(1) IN GENERAL.—The term ‘qualified divi-
23 dends’ means dividends received during the taxable
24 year from—

1 “(A) domestic corporations, and

2 “(B) qualified foreign corporations.

3 “(2) QUALIFIED FOREIGN CORPORATIONS.—

4 “(A) IN GENERAL.—Except as otherwise
5 provided in this paragraph, the term ‘qualified
6 foreign corporation’ means any foreign corpora-
7 tion if—

8 “(i) such corporation is incorporated
9 in a possession of the United States, or

10 “(ii) such corporation is eligible for
11 benefits of a comprehensive income tax
12 treaty with the United States which the
13 Secretary determines is satisfactory for
14 purposes of this paragraph and which in-
15 cludes an exchange of information pro-
16 gram.

17 “(B) DIVIDENDS ON STOCK READILY
18 TRADABLE ON UNITED STATES SECURITIES
19 MARKET.—A foreign corporation not otherwise
20 treated as a qualified foreign corporation under
21 subparagraph (A) shall be so treated with re-
22 spect to any dividend paid by such corporation
23 if the stock with respect to which such dividend
24 is paid is readily tradable on an established se-
25 curities market in the United States.

1 “(C) EXCLUSION OF DIVIDENDS OF CER-
2 TAIN FOREIGN CORPORATIONS.—Such term
3 shall not include any foreign corporation which
4 for the taxable year of the corporation in which
5 the dividend was paid, or the preceding taxable
6 year, is a passive foreign investment company
7 (as defined in section 1297).

8 “(3) SPECIAL RULE.—If a taxpayer to whom
9 this section applies receives, with respect to any
10 share of stock, qualified dividend income from 1 or
11 more dividends which are extraordinary dividends
12 (within the meaning of section 1059(c)), any loss on
13 the sale or exchange of such share shall, to the ex-
14 tent of such dividends, be treated as long-term cap-
15 ital loss.

16 “(c) INTEREST.—For purposes of this section, the
17 term ‘interest’ means—

18 “(1) interest on deposits with a bank (as de-
19 fined in section 581),

20 “(2) amounts (whether or not designated as in-
21 terest) paid, in respect to deposits, investment cer-
22 tificates, or withdrawable or repurchasable shares,
23 by—

24 “(A) a mutual savings bank, cooperative
25 bank, domestic building and loan association,

1 industrial loan association or bank, or credit
2 union, or

3 “(B) any other savings or thrift institu-
4 tion, which is chartered and supervised under
5 Federal or State law,

6 the deposits or accounts in which are insured under
7 Federal or State law or which are protected and
8 guaranteed under State law,

9 “(3) interest on—

10 “(A) evidences of indebtedness (including
11 bonds, debentures, notes, and certificates)
12 issued by a domestic corporation in registered
13 form, and

14 “(B) to the extent provided in regulations
15 prescribed by the Secretary, other evidences of
16 indebtedness issued by a domestic corporation
17 of a type offered by corporations to the public,

18 “(4) interest on obligations of the United
19 States, a State, or a political subdivision of a State
20 (not excluded from gross income of the taxpayer
21 under any other provision of law), and

22 “(5) interest attributable to participation shares
23 in a trust established and maintained by a corpora-
24 tion established pursuant to Federal law.

1 “(d) CERTAIN NONRESIDENT ALIENS INELIGIBLE
2 FOR EXCLUSION.—In the case of a nonresident alien indi-
3 vidual, subsection (a) shall apply only—

4 “(1) in determining the tax imposed for the
5 taxable year pursuant to section 871(b)(1) and only
6 in respect to dividends and interest which are effec-
7 tively connected with the conduct of a trade or busi-
8 ness within the United States, or

9 “(2) in determining the tax imposed for the
10 taxable year pursuant to section 877(b).”.

11 (b) CONFORMING AMENDMENT.—Section 1 of such
12 Code is amended by striking subsection (h).

13 (c) CLERICAL AMENDMENT.—The table of sections
14 for such part III is amended by inserting after the item
15 relating to section 139B the following new item:

“Sec. 139C. Capital gains, dividends, and interest.”.

16 (d) EFFECTIVE DATE.—The amendments made by
17 this section shall apply to taxable years beginning after
18 December 31, 2008.

19 **SEC. 505. REPEAL OF ESTATE AND GIFT TAXES.**

20 (a) IN GENERAL.—Subtitle B of the Internal Rev-
21 enue Code of 1986 is hereby repealed.

22 (b) EFFECTIVE DATE.—The repeal made by sub-
23 section (a) shall apply to the estates of decedents dying,
24 and gifts made, and generation-skipping transfers after
25 December 31, 2008.

TITLE VI—BUSINESS CONSUMPTION TAX

SEC. 601. SHORT TITLE.

This title may be cited as the “Competitive American Business Tax”.

SEC. 602. REPEAL OF CORPORATE INCOME TAX; NEW TAX PAID BY CORPORATIONS AND OTHER BUSI- NESSES.

(a) IN GENERAL.—Subtitle A of the Internal Revenue Code of 1986 is amended by inserting after chapter 6 the following new chapter:

“CHAPTER 7—BUSINESS CONSUMPTION TAX

“SUBCHAPTER A. IMPOSITION OF TAX.

“SUBCHAPTER B. BASIC RULES FOR BUSINESS CONSUMPTION TAX.

“SUBCHAPTER C. CAPITAL CONTRIBUTIONS, MERGERS, ACQUISITIONS, AND DISTRIBUTIONS.

“SUBCHAPTER D. ACCOUNTING METHOD RULES.

“SUBCHAPTER E. LAND AND RENTAL PROPERTY.

“SUBCHAPTER F. INSURANCE AND FINANCIAL PRODUCTS.

“SUBCHAPTER G. FINANCIAL INTERMEDIATION AND FINANCIAL INSTITUTIONS.

“SUBCHAPTER H. TAX-EXEMPT ORGANIZATIONS.

“SUBCHAPTER I. COOPERATIVES.

“SUBCHAPTER J. SOURCING RULES.

“SUBCHAPTER K. IMPORT TAX.

“SUBCHAPTER L. TRANSITION RULES.

“SUBCHAPTER M. RULES FOR ADMINISTRATION, CONSOLIDATED RETURNS.

“SUBCHAPTER N. DEFINITIONS AND RULES OF APPLICATION.

1 **“Subchapter A—Imposition of Tax**

“Sec. 1601. Imposition of tax.

“Sec. 1602. Taxable amount.

“Sec. 1603. Zero rating for exports and interest.

“Sec. 1604. Governmental entities.

“Sec. 1605. Exempt organizations.

“Sec. 1606. Credit against tax.

2 **“SEC. 1601. IMPOSITION OF TAX.**

3 “(a) GENERAL RULE.—A tax is hereby imposed on
4 each taxable transaction.

5 “(b) AMOUNT OF TAX.—Except as otherwise pro-
6 vided in this chapter, the amount of the tax shall be 8.5
7 percent of the taxable amount.

8 “(c) TAXABLE TRANSACTION.—For purposes of this
9 chapter, the term ‘taxable transaction’ means—

10 “(1) the sale of property in the United States,

11 “(2) the performance of services in the United
12 States, and

13 “(3) the importing of property into the United
14 States,

15 by a taxable person in a business transaction.

16 “(d) BUSINESS TRANSACTION.—

17 “(1) GENERAL RULE.—For purposes of this
18 chapter, the term ‘business transaction’ means a
19 transaction engaged in by—

20 “(A) a corporation, or

21 “(B) any person (other than a corporation)
22 in connection with a business.

1 “(2) SALES AND LEASES OF REAL PROPERTY;
2 IMPORTS.—For purposes of this chapter—

3 “(A) IN GENERAL.—The term ‘business
4 transaction’ includes—

5 “(i) any sale or leasing of real prop-
6 erty, and

7 “(ii) any importing of property,
8 whether or not such transaction is described in
9 paragraph (1).

10 “(B) CERTAIN IMPORTED ARTICLES.—
11 Notwithstanding subparagraph (A)(ii), the im-
12 porting of an article which is free of duty under
13 part 2 of schedule 8 of the Tariff Schedules of
14 the United States shall not be treated as a busi-
15 ness transaction unless such transaction is de-
16 scribed in paragraph (1).

17 “(e) TAXABLE PERSON.—

18 “(1) GENERAL RULE.—Except as otherwise
19 provided in this chapter, for purposes of this chap-
20 ter, the term ‘taxable person’ means a person who
21 engages in a business or in a business transaction.

22 “(2) TREATMENT OF EMPLOYEES, ETC.—For
23 purposes of this chapter, an employee shall not be
24 treated as a taxable person with respect to activities
25 engaged in as an employee.

1 “(f) TRANSACTIONS IN THE UNITED STATES.—

2 “(1) SALES OF PROPERTY.—For purposes of
3 this chapter—

4 “(A) IN GENERAL.—Except as provided in
5 subparagraph (B), the sale of property shall be
6 treated as occurring where delivery takes place.

7 “(B) REAL PROPERTY.—The sale of real
8 property shall be treated as occurring where the
9 real property is located.

10 “(2) PERFORMANCE OF SERVICE.—For pur-
11 poses of this chapter—

12 “(A) IN GENERAL.—Except as otherwise
13 provided in this paragraph, a service shall be
14 treated as occurring where it is performed.

15 “(B) SERVICES PERFORMED INSIDE AND
16 OUTSIDE THE UNITED STATES.—If a service is
17 performed both inside and outside the United
18 States, such service shall be treated as per-
19 formed—

20 “(i) inside the United States, if 50
21 percent or more of such service is per-
22 formed inside the United States, and

23 “(ii) outside the United States, if less
24 than 50 percent of such service is per-
25 formed inside the United States.

1 “(g) RULES RELATING TO OTHER TERMS USED IN
2 SUBSECTION (c).—

3 “(1) EXCHANGES TREATED AS SALES.—For
4 purposes of this chapter—

5 “(A) an exchange of property for property
6 or services shall be treated as a sale of prop-
7 erty, and

8 “(B) an exchange of services for property
9 or services shall be treated as the performance
10 of services.

11 “(2) CERTAIN TRANSFERS TO EMPLOYEES
12 TREATED AS SALES.—For purposes of this chapter,
13 the transfer of property to an employee as com-
14 pensation (other than a transfer of a type for which
15 no amount is includible in the gross income of em-
16 ployees for purposes of chapter 1) shall be treated
17 as the sale of property.

18 “(3) PERFORMANCE OF SERVICES.—For pur-
19 poses of this chapter—

20 “(A) CERTAIN ACTIVITIES TREATED AS
21 PERFORMANCE OF SERVICES.—Activities treat-
22 ed as included in the performance of services
23 shall include (but shall not be limited to)—

24 “(i) permitting the use of property,

1 “(ii) the granting of a right to the
2 performance of services or to reimburse-
3 ment (including the granting of warranties,
4 insurance, and similar items), and

5 “(iii) the making of a covenant not to
6 compete (or similar agreement to refrain
7 from doing something).

8 “(B) EMPLOYERS AND EMPLOYEES.—

9 “(i) SERVICES FOR EMPLOYER.—An
10 employee’s services for the employee’s em-
11 ployer shall not be treated as the perform-
12 ance of services.

13 “(ii) SERVICES FOR EMPLOYEE.—An
14 employer’s services for the employer’s em-
15 ployee shall not be treated as the perform-
16 ance of services unless such services are of
17 a type which constitute gross income to the
18 employee for purposes of chapter 1.

19 “(C) PERFORMANCE OF SERVICES TREAT-
20 ED AS SALE OF SERVICES.—The performance of
21 services shall be treated as the sale of services.

22 **“SEC. 1602. TAXABLE AMOUNT.**

23 “(a) AMOUNT CHARGED CUSTOMER.—For purposes
24 of this chapter, the taxable amount for any transaction
25 for which money is the only consideration shall be the

1 price charged the purchaser of the property or services by
2 the seller thereof—

3 “(1) including all invoiced charges for transpor-
4 tation, and other items payable to the seller with re-
5 spect to this transaction, but

6 “(2) excluding the tax imposed by section 1601
7 with respect to this transaction and excluding any
8 State and local sales and use taxes with respect to
9 this transaction.

10 “(b) EXCHANGES.—For purposes of this chapter, the
11 taxable amount in any exchange of property or services
12 shall be the fair market value of the property or services
13 transferred by the person liable for the tax (determined
14 as if such person had sold the property or services to the
15 other party to the exchange).

16 “(c) IMPORTS.—For purposes of this chapter, the
17 taxable amount in the case of any import shall be—

18 “(1) the customs value plus customs duties and
19 any other duties which may be imposed, or

20 “(2) if there is no such customs value, the fair
21 market value (determined as if the importer had sold
22 the property).

23 **“SEC. 1603. ZERO RATING FOR EXPORTS AND INTEREST.**

24 “The rate of the tax imposed by section 1601 shall
25 be zero with respect to the following:

1 “(1) EXPORTS.—Exports of property.

2 “(2) INTEREST.—Interest.

3 **“SEC. 1604. GOVERNMENTAL ENTITIES.**

4 “(a) ZERO RATING FOR SALES TO GOVERNMENTAL
5 ENTITIES AND EDUCATIONAL ACTIVITIES OF GOVERN-
6 MENTAL ENTITIES.—The rate of the tax imposed by sec-
7 tion 1601 shall be zero with respect to the following:

8 “(1) SALES TO GOVERNMENTAL ENTITIES.—
9 Any sale of property or services to a governmental
10 entity.

11 “(2) EDUCATIONAL ACTIVITIES.—The providing
12 by a governmental entity of property and services in
13 connection with the education of students.

14 “(b) SALES, ETC., BY GOVERNMENTAL ENTITIES
15 TAXABLE ONLY WHERE SEPARATE CHARGE IS MADE.—
16 For purposes of this chapter, the sale of property and the
17 performance of services by a governmental entity shall be
18 a taxable transaction if (and only if) a separate charge
19 of fee is made therefor.

20 “(c) GOVERNMENTAL ENTITY DEFINED.—For pur-
21 poses of this chapter, the term ‘governmental entity’
22 means the United States, any State or political subdivision
23 thereof, the District of Columbia, a Commonwealth or pos-
24 session of the United States, or any agency or instrumen-
25 tality of any of the foregoing.

1 **“SEC. 1605. EXEMPT ORGANIZATIONS.**

2 “(a) ZERO RATING FOR SECTION 501(c)(3) ORGANI-
3 ZATIONS; CREDIT ALLOWED FOR ALL PURCHASES.—

4 “(1) ZERO RATING.—The rate of the tax im-
5 posed by section 1601 shall be zero with respect to
6 any taxable transaction engaged in by a section
7 501(c)(3) organization other than as part of an un-
8 related business.

9 “(2) CREDIT ALLOWED FOR ALL PURCHASES.—
10 For purposes of this chapter, a section 501(c)(3) or-
11 ganization shall be treated as engaged in a business
12 with respect to all of its activities.

13 “(b) TAXABLE TRANSACTIONS IN CASE OF OTHER
14 EXEMPT ORGANIZATIONS.—For purposes of this chapter,
15 the sale of property and the performance of services by
16 any exempt organization other than a section 501(c)(3)
17 organization shall be a taxable transaction if (and only
18 if) a charge or fee is made for such services.

19 “(c) DEFINITIONS.—For purposes of this chapter—

20 “(1) SECTION 501(c)(3) ORGANIZATIONS.—The
21 term ‘section 501(c)(3) organization’ means an orga-
22 nization described in section 501(c)(3) which is ex-
23 empt from tax under section 501(a).

24 “(2) OTHER EXEMPT ORGANIZATION.—The
25 term ‘other exempt organization’ means any organi-

1 zation (other than a section 501(c)(3) organization)
2 which is exempt from tax under chapter 1.

3 **“SEC. 1606. CREDIT AGAINST TAX.**

4 “(a) GENERAL RULE.—There shall be allowed as a
5 credit against the tax imposed by section 1601 the aggre-
6 gate amount of tax imposed by section 1601 which has
7 been paid by sellers to the taxpayer of property and serv-
8 ices which the taxpayer uses in the business to which the
9 transaction relates.

10 “(b) EXEMPT TRANSACTIONS, ETC.—If—

11 “(1) property or services are used partly in the
12 business and partly for other purposes, or

13 “(2) property or services are used partly for
14 taxable transactions and partly for other trans-
15 actions,

16 the credit shall be allowable only with respect to the prop-
17 erty and services used for taxable transactions in the busi-
18 ness. No credit shall be allowable for any transaction oc-
19 curring when the taxpayer was a nontaxable person.

20 “(c) EXCESS CREDIT TREATED AS OVERPAYMENT.—

21 “(1) IN GENERAL.—If for any taxable period
22 the aggregate amount of the credits allowable by
23 subsection (a) exceeds the aggregate amount of the
24 tax imposed by section 1601 for such period, such

excess shall be treated as an overpayment of the tax imposed by section 1601.

“(2) TIME WHEN OVERPAYMENT ARISES.—Any overpayment under paragraph (1) for any taxable period shall be treated as arising on the later of—

“(A) the due date for the return for such period, or

“(B) the date on which the return is filed.

“Subchapter B—Basic Rules for Business

Consumption Tax

“Sec. 1611. Gross profits.

“Sec. 1612. Taxable receipts.

“Sec. 1613. Deductible amounts.

“Sec. 1614. Cost of business purchases.

“Sec. 1615. Business entity and business activity.

“Sec. 1616. Loss carryover deduction.

“SEC. 1611. GROSS PROFITS.

“‘Gross profits’ means for a taxable transaction of a business entity the amount by which—

“(1) the taxable receipts of the business entity with respect to the taxable transaction, exceed

“(2) the deductible amounts for the business entity with respect to the taxable transactions.

“SEC. 1612. TAXABLE RECEIPTS.

“(a) IN GENERAL.—‘Taxable receipts’ means all receipts from the sale of property, use of property, and performance of services in the United States.

1 “(b) GAMES OF CHANCE.—Amounts received for
2 playing games of chance by business entities engaging in
3 the activity of providing such games shall be treated as
4 receipts from the sale of property or services.

5 “(c) IN-KIND RECEIPTS.—The taxable receipts at-
6 tributable to the receipt of property, use of property or
7 services in whole or partial exchange for property, use of
8 property or services equal the fair market value of the
9 services or property received.

10 “(d) TAXES.—Taxable receipts do not include any ex-
11 cise tax, sales tax, custom duty, or other separately stated
12 levy imposed by a Federal, State, or local government re-
13 ceived by a business entity in connection with the sale of
14 property or services or the use of property.

15 “(e) FINANCIAL RECEIPTS.—Except as provided in
16 subchapter G (relating to financial intermediation and fi-
17 nancial institutions), taxable receipts do not include finan-
18 cial receipts (as defined by regulations by the Secretary).

19 **“SEC. 1613. DEDUCTIBLE AMOUNTS.**

20 “‘Deductible amounts’ for a business entity in a tax-
21 able transaction include—

22 “(1) the cost of business purchases with respect
23 to the taxable transaction (as determined under sec-
24 tion 1614),

“(2) such entity’s loss carryover deduction (as determined under section 1616) , and

“(3) the transition basis deduction (as determined under section 1711).

“SEC. 1614. COST OF BUSINESS PURCHASES.

“(a) BUSINESS PURCHASES.—

“(1) IN GENERAL.—‘Business purchases’ means the acquisition of—

“(A) property,

“(B) the use of property, or

“(C) services

in the United States for use in a business activity.

“(2) EXAMPLES.—Business purchases include (without limitation) the—

“(A) purchase or rental of real property,

“(B) purchase or rental of capital equipment,

“(C) purchase of supplies and inventory,

“(D) purchase of services from independent contractors,

“(E) purchase of financial intermediation services (as determined in accordance with section 1661),

“(F) imports for use in a business activity, and

1 “(G) premiums for the cost of health in-
2 surance policies for which the service provider,
3 members of his family, or persons designated by
4 him or members of his family are the bene-
5 ficiaries.

6 “(3) EXCLUSIONS.—Business purchases do not
7 include—

8 “(A) payments for use of money or capital,
9 such as interest or dividends (except to the ex-
10 tent that a portion so paid is a fee for financial
11 intermediation services),

12 “(B) premiums for life insurance,

13 “(C) the acquisition of savings assets or
14 other financial instruments.

15 “(D) property acquired outside the United
16 States (but such property shall be taken into
17 account as an import if imported),

18 “(E) services performed outside the United
19 States (unless treated as imported into the
20 United States),

21 “(F) compensation expenses for an indi-
22 vidual (other than amounts paid to an indi-
23 vidual in his capacity as a business entity), or

24 “(G) taxes (except as provided in sub-
25 section (b)(2) relating to product taxes).

1 “(4) COMPENSATION EXPENSES.—‘Compensa-
2 tion expenses’ means—

3 “(A) wages, salaries or other cash payable
4 for services,

5 “(B) any taxes imposed on the recipient
6 that are withheld by the business entity,

7 “(C) the cost of property purchased to pro-
8 vide employees with compensation (other than
9 property incidental to the provision of fringe
10 benefits that are excluded from income under
11 the individual tax),

12 “(D) the cost of fringe benefits which are
13 includible in an employee’s, partner’s, or propri-
14 etor’s income under section 5 (or are excluded
15 solely because they constitute employee sav-
16 ings), including (without limitation)—

17 “(i) contributions to retirement and
18 severance benefit plans,

19 “(ii) premiums for the cost of life, ac-
20 cident, disability and other insurance poli-
21 cies for which the service provider, mem-
22 bers of his family, or persons designated
23 by him or members of his family are the
24 beneficiaries,

1 “(iii) rental of parking spaces or park-
2 ing fees (unless the parking space is used
3 for a vehicle that is regularly used in a
4 business activity);

5 “(iv) employer paid educational bene-
6 fits;

7 “(v) employer paid housing (other
8 than housing provided for the convenience
9 of the employer); and

10 “(vi) employer paid meals (other than
11 meals provided for the convenience of the
12 employer).

13 “(b) COST OF BUSINESS PURCHASES.—

14 “(1) IN GENERAL.—The ‘cost of a business
15 purchase’ is the amount paid or to be paid for the
16 business purchase.

17 “(2) TAXES.—

18 “(A) IN GENERAL.—The ‘cost of business
19 purchases’ includes any product taxes paid with
20 respect to the property or services purchased.

21 “(B) PRODUCT TAX.—‘Product tax’ means
22 any excise tax, sales or use tax, custom duty, or
23 other separately stated levy imposed by a Fed-
24 eral, State, or local government on the produc-
25 tion, severance or consumption of property or

on the provision of services, whether or not separately stated, and including any such taxes that are technically imposed on the seller of property or services.

“(C) TAXES NOT PRODUCT TAXES.—Product taxes do not include—

“(i) the import tax,

“(ii) state and local property taxes,

“(iii) franchise or income taxes,

“(iv) payroll taxes and self-employment taxes, or

“(v) the business tax.

“(3) IMPORTS.—In the case of an import by a business entity, the cost of the import is the import price for purposes of the import tax. The import tax is not part of the cost of the import.

“(c) PROPERTY AND SERVICES ACQUIRED FOR PROPERTY.—If a business entity receives property or services from a business entity in whole or partial exchange for property or services, the property or services acquired shall be treated as if they were purchased for an amount equal to the fair market value of the services or property received. For purposes of this section, property includes stock and other equity interests in business other than

1 stock or an equity interest in the business entity acquiring
2 the property or services.

3 “(d) GAMBLING PAYMENTS.—In the case of a busi-
4 ness involving gambling, lotteries, or other games of
5 chance, business purchases include amounts paid to win-
6 ners.

7 “(e) SAVINGS ASSETS.—‘Savings assets’ means
8 stocks, bonds, securities, certificates of deposits, invest-
9 ments in partnerships and limited liability companies,
10 shares of mutual funds, life insurance policies, annuities,
11 and other similar savings or investment assets.

12 **“SEC. 1615. BUSINESS ENTITY AND BUSINESS ACTIVITY.**

13 “(a) BUSINESS ENTITY.—For purposes of the busi-
14 ness tax, ‘business entity’ means any corporation, unincor-
15 porated association, partnership, limited liability company,
16 proprietorship, independent contractor, individual, or any
17 other person engaging in business activity in the United
18 States. An individual shall be considered a business entity
19 only with respect to the individual’s business activities.

20 “(b) BUSINESS ACTIVITY.—‘Business activity’ means
21 the sale of property or services, the leasing of property,
22 the development of property or services for subsequent
23 sale or use in producing property or services for subse-
24 quent sale. ‘Business activity’ does not include casual or
25 occasional sales of property used by an individual (other

1 than in a business activity), such as the sale by an indi-
2 vidual of a vehicle used by the individual.

3 “(c) EXCEPTION FOR CERTAIN EMPLOYEES.—

4 “(1) IN GENERAL.—‘Business activity’ does not
5 include—

6 “(A) the performance of services by an em-
7 ployee for an employer that is a business entity
8 with respect to the activity in which the em-
9 ployee is engaged, or

10 “(B) the performance of regular domestic
11 household services (including babysitting,
12 housecleaning, and lawn cutting) by an em-
13 ployee of an employer that is an individual or
14 family.

15 “(2) EMPLOYEE DEFINED.—For purposes of
16 this subsection, ‘employee’ includes an individual
17 partner who provides services to a partnership or an
18 individual member who provides services to a limited
19 liability company, or a proprietor with respect to
20 compensation for services from his proprietorship.

21 **“SEC. 1616. LOSS CARRYOVER DEDUCTION.**

22 “(a) DEDUCTION.—The ‘loss carryover deduction’ for
23 a taxable period is the lesser of—

1 “(1) the business entity’s gross profits for the
2 taxable period (determined without the loss carry-
3 over deduction), or

4 “(2) the amount of the loss carryover to the
5 taxable period.

6 “(b) LOSS CARRYOVER.—

7 “(1) GENERAL RULE.—A loss for any taxable
8 period shall be a loss carryover to the succeeding
9 taxable period.

10 “(2) LOSS CARRYOVERS TO A TAXABLE PE-
11 RIOD.—The loss carryover to a taxable period is the
12 sum of the loss carryovers from all prior taxable pe-
13 riods beginning on or after January 1 of the year
14 following the year in which this chapter is enacted.

15 “(3) REDUCTION OF LOSS CARRYOVERS AS A
16 RESULT OF THE DEDUCTION.—A business entity’s
17 loss carryovers shall be reduced each year by the
18 amount of the loss carryover deduction for the year.
19 Loss carryovers shall be reduced in the order that
20 they arose.

21 “(c) LOSS FOR TAXABLE PERIOD.—A business enti-
22 ty’s loss (if any) for the taxable period equals the excess
23 (if any) of—

24 “(1) the sum of—

“(A) the cost of business purchases for the taxable period, and

“(B) the transition basis adjustment for the taxable period, over

“(2) taxable receipts for the taxable period.

“(d) SPECIAL RULES.—

“(1) CONSOLIDATED RETURNS.—In the case of a consolidated return, the loss for a taxable period shall be determined on a consolidated group basis.

In the case of a deconsolidation, the loss carryovers from the consolidated group shall be allocated in accordance with rules to be prescribed by the Secretary.

“(2) LOSS CARRYOVERS OF ACQUIRED BUSINESS ENTITY.—Any loss arising in the case of the acquisition of a business entity shall be allowed as prescribed by the Secretary.

“(e) INTEREST.—Interest shall be allowed on each loss carried forward under this section at a rate determined by the Secretary of the Treasury.

“Subchapter C—Capital Contributions, Mergers, Acquisitions, and Distributions

“Sec. 1621. Contributions to a business entity.

“Sec. 1622. Distributions of property.

“Sec. 1623. Asset acquisitions.

“Sec. 1624. Mergers and stock acquisitions.

“Sec. 1625. Spin-offs, split-offs, etc.

“Sec. 1626. Allocation of certain tax attributes.

1 **“SEC. 1621. CONTRIBUTIONS TO A BUSINESS ENTITY.**

2 “(a) BY BUSINESS ENTITY.—

3 “(1) CASH.—If a business entity contributes
4 cash to a business entity of which it is or becomes
5 a partial or full owner, the amount contributed is
6 not a deductible amount to the contributor or a tax-
7 able receipt to the recipient.

8 “(2) PROPERTY OR SERVICES.—If a business
9 entity contributes property or services to a business
10 entity of which it is or becomes a partial or full
11 owner, the transaction will not result in taxable re-
12 ceipts to the contributor or a deduction for a busi-
13 ness purchase for the recipient and will not con-
14 stitute a sale resulting in taxable receipts to the con-
15 tributor.

16 “(b) BY INDIVIDUAL.—

17 “(1) CASH.—If an individual contributes cash
18 to a business entity, the cash received is not a tax-
19 able receipt.

20 “(2) NEW PROPERTY.—If an individual contrib-
21 utes to a business entity property that the individual
22 purchased for the business entity but which was not
23 used by any person after its purchase, the property
24 shall be considered purchased by such business enti-
25 ty from the person from which the individual pur-
26 chased the property.

1 “(3) PERSONAL USE PROPERTY.—

2 “(A) IN GENERAL.—If an individual con-
3 tributes personal use property to a business en-
4 tity in which the individual has an ownership
5 interest or for which the individual receives an
6 ownership interest, the business entity shall not
7 be permitted to deduct the value of the property
8 received as a business expense. The business
9 entity will have a tax basis in the contributed
10 property equal to the contributor’s basis.

11 “(B) PERSONAL USE PROPERTY.—‘Per-
12 sonal use property’ means any property used by
13 an individual at any time other than in a busi-
14 ness activity.

15 “(4) SERVICES.—If an individual contributes
16 services to a business entity in which the individual
17 has an ownership interest or receives an ownership
18 interest, the business entity shall not be permitted to
19 deduct the value of the services received (or the
20 value of the equity interest provided to the services
21 provider).

22 **“SEC. 1622. DISTRIBUTIONS OF PROPERTY.**

23 “(a) DISTRIBUTIONS OTHER THAN TO CONTROL-
24 LING BUSINESS.—If a business entity distributes all or a
25 portion of its assets to its owners (other than a controlling

1 business entity), the business entity will be treated as if
2 it sold the assets to its owners at fair market value. The
3 fair market value will be determined by the distributing
4 corporation and those determinations, unless unreason-
5 able, will be binding on the recipients.

6 “(b) DISTRIBUTIONS TO A CONTROLLING BUSI-
7 NESS.—If a business entity distributes all or a portion of
8 its assets to a controlling business, the controlling busi-
9 ness will assume the distributing entity’s tax attributes
10 with respect to the assets and neither entity will have tax-
11 able receipts or a deduction as a result of the transaction.

12 “(c) DISTRIBUTION OF PERSONAL USE PROP-
13 ERTY.—If personal use property is distributed to the indi-
14 vidual who contributed the personal use property to a busi-
15 ness entity, the fair market value of the property for pur-
16 poses of paragraph (a) shall equal the basis of the prop-
17 erty plus any enhancement in value of the property attrib-
18 utable to business purchases with respect to the property.

19 “(d) CONTROLLING BUSINESS ENTITY.—A business
20 entity is a ‘controlling business entity’ with respect to an-
21 other business entity if it owns directly or indirectly more
22 than 50 percent of the profits or capital interest in the
23 other business entity.

24 “(e) APPLICATION OF THIS SECTION.—This section
25 applies to both liquidating and nonliquidating distribu-

1 tions. Property shall be treated as distributed if the prop-
2 erty is used for a nonbusiness purpose for more than an
3 insubstantial period of time during a taxable period.

4 **“SEC. 1623. ASSET ACQUISITIONS.**

5 “(a) IN GENERAL.—If a business entity transfers
6 some or all of its assets, the consideration received for
7 such assets shall be allocated among the assets transferred
8 in the same manner as was required by section 1060. If
9 the transferee and transferor agree in writing on the allo-
10 cation of any consideration, or as to the fair market value
11 of any of the assets, such agreement shall be binding on
12 both the transferor and transferee unless the Secretary de-
13 termines that such allocation (or fair market value) is not
14 appropriate.

15 “(b) TAX CONSEQUENCES.—The tax consequences of
16 an asset acquisition shall be determined in accordance
17 with the rules of this chapter and shall be dependent upon
18 allocations made under subsection (a). In general, consid-
19 eration allocable to savings assets, such as stock in an-
20 other business entity, would not be included in taxable re-
21 cepts of the transferor and would not be a business pur-
22 chase of the purchaser, but consideration allocable to the
23 sale of tangible property and intangible property (other
24 than savings assets) will constitute taxable receipts of the
25 seller and a business purchase of the purchaser.

1 “(c) ELECTION TO TREAT ASSET ACQUISITION AS A
2 STOCK ACQUISITION.—In the case of the sale of substan-
3 tially all of the assets of a business entity or substantially
4 all of the assets of a line of business or a separately stand-
5 ing business of a business entity, the transferee and trans-
6 feror can jointly elect to treat the acquisition as if it were
7 an acquisition of the stock of a business entity holding
8 the assets so transferred. In such case, the rules of section
9 1624 shall apply.

10 “(d) AUTHORITY TO REQUIRE ALLOCATION AGREE-
11 MENT AND NOTICE TO THE SECRETARY.—If the Sec-
12 retary determines that certain types of asset acquisitions
13 have significant possibilities of tax avoidance, the Sec-
14 retary may require—

15 “(1) parties to such types of acquisitions to
16 enter into agreements allocating consideration,

17 “(2) parties to acquisitions involving certain
18 kinds of assets to enter into agreements allocating
19 part of the consideration to those assets, or

20 “(3) parties to certain acquisitions to report in-
21 formation to the Secretary.

22 “(e) ASSET ACQUISITION RULES DO NOT APPLY IF
23 CONSIDERATION INCLUDES EQUITY IN PURCHASER.—

24 “(1) IN GENERAL.—If a business entity issues
25 its own equity or equity in a subsidiary or other con-

1 trolled entity as part of the consideration for the
2 transfer of assets to it, the transaction shall not be
3 treated as an asset acquisition and the rules of sec-
4 tion 1624 shall apply.

5 “(2) EQUITY.—For purposes of this subsection,
6 equity means—

7 “(A) stock, in the case of a corporation,

8 “(B) partnership or similar interest, in the
9 case of a partnership or limited liability com-
10 pany, and

11 “(C) an ownership interest or interest in
12 profits in the case of any other business entity.

13 **“SEC. 1624. MERGERS AND STOCK ACQUISITIONS.**

14 “(a) MERGERS.—A merger of one business entity
15 into another or two businesses entities into a third busi-
16 ness entity or any other similar transaction shall have no
17 direct consequences under the business tax. The surviving
18 entity shall assume the tax attributes of the merged cor-
19 porations, including any loss carryovers and credit
20 carryovers.

21 “(b) STOCK ACQUISITION.—The acquisition of all or
22 substantially all of the ownership interest in one business
23 entity either for cash or in exchange for ownership in the
24 acquiring entity or an entity controlled by the acquired

1 entity shall have no direct consequences under the busi-
 2 ness tax.

3 **“SEC. 1625. SPIN-OFFS, SPLIT-OFFS, ETC.**

4 “A spin-off, split-off or split-up of a business entity
 5 shall have no direct tax consequences under the business
 6 tax.

7 **“SEC. 1626. ALLOCATION OF CERTAIN TAX ATTRIBUTES.**

8 “The Secretary shall prescribe rules for allocation of
 9 loss carryovers in cases of substantial shifts of assets from
 10 one business entity to another business entity. Under such
 11 rules, a portion of a business entity’s carryovers may be
 12 deemed transferred when assets are transferred.

13 **“Subchapter D—Accounting Method Rules**

“Sec. 1631. General accounting rules.

“Sec. 1632. Use of the cash method of accounting.

“Sec. 1633. Long-term contracts.

“Sec. 1634. Post-sale price adjustments and refunds.

“Sec. 1635. Bad debts.

“Sec. 1636. Transition rules.

14 **“SEC. 1631. GENERAL ACCOUNTING RULES.**

15 “(a) IN GENERAL.—Except as provided in section
 16 1632, a business entity shall use an accrual method of
 17 accounting for purposes of determining the timing of rec-
 18 ognition of taxable receipts and deduction of business pur-
 19 chases. All business purchases shall be deducted when in-
 20 curred (in the case of a business entity using the accrual
 21 method of accounting) or when paid (in case of a business
 22 entity using the cash method of accounting) without re-

1 gard to whether the business purchases are for or relate
2 to—

3 “(1) inventory,

4 “(2) assets with a useful life of more than one
5 year, or

6 “(3) property that will be used to produce other
7 property.

8 “(b) ECONOMIC PERFORMANCE.—For purposes of
9 determining whether an amount has been incurred, the all
10 events test shall not be treated as met any earlier than
11 when economic performance with respect to such item oc-
12 curs.

13 “(c) CONSISTENT ACCOUNTING METHODS.—Except
14 as otherwise expressly provided in this chapter, a business
15 entity shall secure the consent of the Secretary before
16 changing the method of accounting by which it determines
17 gross profits. This provision shall not apply to changes
18 required by the adoption of the business tax.

19 **“SEC. 1632. USE OF THE CASH METHOD OF ACCOUNTING.**

20 “(a) IN GENERAL.—A business entity that was per-
21 mitted to use and used the cash method of accounting
22 under the Internal Revenue Code of 1986 shall be per-
23 mitted to continue to use the cash method of accounting.

24 “(b) NEW BUSINESS ENTITIES.—A new business en-
25 tity shall be permitted to use the cash method of account-

1 ing if permitted to under regulations prescribed by the
2 Secretary.

3 “(c) CHANGE OR EXPANSION OF BUSINESS.—Sub-
4 section (a) shall cease to apply to a business entity that
5 changes or expands its business such that under regula-
6 tions prescribed by the Secretary it is no longer eligible
7 to use the cash method of accounting.

8 “(d) REGULATIONS.—

9 “(1) USE OF CASH METHOD.—The Secretary
10 shall prescribe regulations defining which business
11 entities may use the cash method of accounting. In
12 general, those regulations shall be consistent with
13 the rules under sections 447 and 448, except that all
14 corporations shall be treated as C corporations were
15 treated under those sections. The regulations shall
16 not require a business entity described in subsection
17 (a) to convert to the accrual method prior to Janu-
18 ary 1, 2008.

19 “(2) CHANGE IN ACCOUNTING METHOD.—The
20 Secretary shall prescribe regulations to prevent dou-
21 ble counting of taxable receipts and deductible ex-
22 penses in the case of a change in accounting method.

23 **“SEC. 1633. LONG-TERM CONTRACTS.**

24 “(a) IN GENERAL.—In the case of a long-term con-
25 tract—

1 “(1) CONTRACTOR EXPENSES.—The contractor
2 shall be entitled to deduct its business purchases
3 when paid or incurred.

4 “(2) CONTRACTOR RECEIPTS.—The contractor
5 shall recognize taxable receipts—

6 “(A) in the case of a project in which the
7 acquirer has no ownership interest in the
8 project until delivery—

9 “(i) upon delivery of the project, in
10 the case of an accrual basis contractor, or

11 “(ii) upon the later of delivery of the
12 project or the receipt of payment, in the
13 case of cash-basis contractor.

14 “(B) in the case of a project in which the
15 acquirer obtains an ownership interest as the
16 project is constructed—

17 “(i) when the contractor has the right
18 to payments, in the case of an accrual
19 basis contractor, or

20 “(ii) upon the later of when the con-
21 tractor receives the cash or has the right
22 to payments, in the case of a cash basis
23 contractor.

1 “(3) ACQUIRER EXPENSES.—The acquirer that
2 is a business entity shall be entitled to deduct its
3 costs of the business purchase—

4 “(A) in the case of a cash-basis acquirer,
5 at such time as a cash basis contractor would
6 be required to treat the amounts paid as tax-
7 able receipts, or

8 “(B) in the case of an accrual-basis
9 acquirer, at such time as an accrual basis con-
10 tractor would be required to treat the amounts
11 paid or due as taxable receipts.

12 “(b) RIGHT TO PAYMENTS.—

13 “(1) IN GENERAL.—A contractor shall be treat-
14 ed as having a right to payments with respect to a
15 project at any time to the extent that the contractor
16 would not be required to return payments received
17 (or would be entitled to collect payments not yet re-
18 ceived) if the project were terminated at such time
19 by the contractor.

20 “(2) CONTRACTUAL PROVISIONS.—If a long-
21 term contract includes a procedure for paying the
22 contractor as work is completed (for example, by
23 reason of a draw down from a trust account), the
24 contractual provisions shall generally govern when a
25 contractor has a right to payment.

1 “(3) PERCENTAGE COMPLETION METHOD OF
2 ACCOUNTING.—If a long-term contract does not in-
3 clude a mechanism for paying the contractor as
4 work is completed, the percentage-of-completion
5 method of accounting shall be used to determine the
6 timing of taxable receipts of the contractor and busi-
7 ness purchases of the acquirer.

8 “(c) LONG-TERM CONTRACT.—

9 “(1) IN GENERAL.—‘Long-term contract’
10 means—

11 “(A) any contract that covers service or
12 production through parts of two different cal-
13 endar years if the contract includes a formal
14 deposit and draw-down mechanism, and

15 “(B) any contract for the manufacture,
16 building, installation, or construction of prop-
17 erty if such contract is not completed within the
18 taxable period of the contractor in which such
19 contract is entered into.

20 “(2) EXCEPTION.—A contract for the manufac-
21 ture of property shall not be treated as a long-term
22 contract unless such contract involves the manufac-
23 ture of—

1 “(A) any unique item of a type which is
2 not normally included in the finished goods in-
3 ventory of the taxpayer, or

4 “(B) any item which normally requires
5 more than 12 calendar months to complete.

6 “(d) CONSISTENCY.—The Secretary may require
7 business entities to file statements containing such infor-
8 mation with respect to long-term contracts as the Sec-
9 retary may prescribe to ensure consistency in reporting.

“(e) FOREIGN CONTRACTS.—This section shall not be construed to permit a deduction for a business purchase for the cost of property produced outside the United States pursuant to a long-term contract at any time prior to the import of such property into the United States.

15 "SEC. 1634. POST-SALE PRICE ADJUSTMENTS AND RE-
16 FUNDS.

“(a) RECEIPT OF PRICE ADJUSTMENT.—In the case of a post-sale price adjustment attributable to a business purchase which was taken into account in computing gross profits for a prior taxable transaction, the amount of such adjustment shall be treated as a reduction or increase, as the case may be, in the cost of business purchases for the taxable period in which the adjustment is made or incurred.

1 “(b) ISSUANCE OF PRICE ADJUSTMENT.—In the case
2 of a post-sale price adjustment attributable to a sale the
3 receipts from which were taken into account in deter-
4 mining taxable receipts for a prior taxable transaction, the
5 amount of such adjustment shall be treated as a reduction
6 or increase, as the case may be, in taxable receipts for
7 the taxable period in which the adjustment is made or in-
8 curred.

9 “(c) POST-SALE PRICE ADJUSTMENT.—‘Post-sale
10 price adjustment’ means a refund, rebate, or other price
11 allowance attributable to a sale of property or services or
12 an upward adjustment in price that was not previously
13 taken into account under the business entity’s method of
14 accounting.

15 **“SEC. 1635. BAD DEBTS.**

16 “(a) SELLER.—If an amount owed to an accrual
17 basis business entity for property or services sold—

18 “(1) was taken into account as a taxable receipt
19 in a prior taxable period, and

20 “(2) becomes wholly or partially uncollectible
21 during the taxable period, then the seller shall treat
22 the amount as a reduction in taxable receipts for the
23 taxable period in which it becomes wholly or par-
24 tially uncollectible.

1 “(b) NOTICE REQUIREMENT.—No reduction shall be
2 allowed under subsection (a) unless the seller notifies the
3 purchaser of the amount which the seller has treated as
4 wholly or partially uncollectible.

5 “(c) SUBSEQUENT COLLECTION.—If an amount
6 which was treated as uncollectible under subsection (a) is
7 subsequently collected, it shall be treated as a taxable re-
8 ceipt when collected.

9 “(d) PURCHASER.—If a purchaser receives notice
10 under subsection (b) from a seller and the purchaser has
11 treated the amount labeled uncollectible as a business pur-
12 chase in a prior taxable period, then the purchaser shall
13 treat such amount as a reduction in the cost of business
14 purchases in the taxable period to which the notice relates.
15 If the purchaser subsequently repays such amount, the re-
16 payment shall constitute the cost of a business purchase.

17 **“SEC. 1636. TRANSITION RULES.**

18 “(a) NO DOUBLE DEDUCTIONS.—A business entity
19 shall not be entitled to treat as a ‘cost of business pur-
20 chase’ any amount that the business entity deducted in
21 computing taxable income under the income tax in effect
22 prior the effective date of the business tax.

23 “(b) NO DOUBLE INCLUSION.—A business entity
24 shall not be required to include in taxable receipts any
25 receipt that the business entity took into account in com-

1 putting taxable income under the income tax in effect prior
2 to the effect date of the business tax.

3 “(c) NO LOSS OF DEDUCTION.—An expense which—

4 “(1) a business entity would have been able to
5 deduct as a cost of a business purchase in an ac-
6 counting period before the effective date of the busi-
7 ness tax if the business tax had been in effect in
8 such period, and

9 “(2) the business entity would have been able to
10 deduct as an expense in computing taxable income
11 in a period after the business tax is effective if the
12 income tax had continued in effect, shall be treated
13 as a cost of a business purchase incurred or paid at
14 the time that it would have been paid or incurred
15 under the income tax if the income tax had contin-
16 ued in effect. This subsection shall not apply to any
17 amount which is to be taken into account under sub-
18 chapter N (relating to amortization of transition
19 basis, inventory costs, and safe harbor leases), any
20 amounts which would have been deducted under the
21 income tax through loss carryover deductions, or any
22 deductions deferred by the uniform capitalization
23 rules under section 263A.

24 “(d) ALL TAXABLE RECEIPTS TAXED.—A receipt
25 which—

1 “(1) a business entity would have been required
2 to treat as a taxable receipt in an accounting period
3 before the effective date of the business tax if the
4 business tax had been in effect in such period, and

5 “(2) the business entity would have been re-
6 quired to include in gross income in a period after
7 the business tax is effective if the income tax had
8 continued in effect

9 shall be treated as a taxable receipt at the time that it
10 would have been included in income if the income tax had
11 continued in effect.

12 **“Subchapter E—Land and Rental Property**

“Sec. 1641. No deduction for land purchased for nonbusiness use.

“Sec. 1642. Taxable receipts for land held for nonbusiness use.

“Sec. 1643. Certain rental property.

13 **“SEC. 1641. NO DEDUCTION FOR LAND PURCHASED FOR** 14 **NONBUSINESS USE.**

15 “(a) IN GENERAL.—The acquisition of unimproved
16 land shall not constitute a business purchase if the unim-
17 proved land is not acquired to be used in a business activ-
18 ity or if the land is acquired for—

19 “(1) speculation,

20 “(2) development (including subdivision), or

21 “(3) temporary leasing or other use not com-
22 mensurate with the value of the land,

23 “(4) indefinite future use in a business activity,

24 or

1 “(5) use in compensating employees.

2 “(b) FUTURE USE IN BUSINESS ACTIVITY.—Unim-
3 proved land will not be considered held for ‘indefinite fu-
4 ture use in a business activity’ if promptly upon acquisi-
5 tion, the purchaser or the lessee begins construction of im-
6 provements on the land (other than improvements, such
7 as paving or sewage lines, intended for indefinite future
8 development) that will be used in a business activity. Such
9 improvement must be commensurate with the value of the
10 land.

11 “(c) UNIMPROVED LAND.—‘Unimproved land’
12 means—

13 “(1) land with no buildings on it,

14 “(2) land with improvements if the value of the
15 improvements is relatively small in comparison to
16 the value of the land and it is anticipated that the
17 improvements will be demolished and not used,

18 “(3) land in excess of the amount reasonably
19 needed for the buildings located on it.

20 “(d) CONVERSION TO BUSINESS USE.—If the acqui-
21 sition of land is not treated as a business purchase by rea-
22 son of subsection (a) and the land is subsequently used
23 in a manner for which it could have been treated as a
24 business purchase, the cost of the land will be treated as
25 a business purchase when the improvements on the land

1 are placed in service (or in the case of construction for
2 sale, substantially completed and advertised for sale).

3 **“SEC. 1642. TAXABLE RECEIPTS FROM SALE OF LAND HELD**
4 **FOR NONBUSINESS USE.**

5 “(a) TAX BASIS.—A business entity shall have a tax
6 basis in land equal to the cost of the land if such cost
7 is not deductible by reason of section 1641(a) and the land
8 has not been converted to business use for purposes of
9 section 1641(d).

10 “(b) TAXABLE RECEIPTS OF A LAND SALE.—The
11 taxable receipts from the sale of land (or portion thereof)
12 in which a business entity has a tax basis by reason of
13 subsection (a) shall be the amount by which the proceeds
14 exceed the basis of such land (or portion thereof).

15 **“SEC. 1643. CERTAIN RENTAL PROPERTY.**

16 “(a) IN GENERAL.—Except as provided in subsection
17 (b), the activity of rental of real estate is a business activ-
18 ity to which the business tax applies.

19 “(b) RENTAL PROPERTY BECOMES NONRENTAL
20 PROPERTY.—If property which is considered rental prop-
21 erty for purposes of subsection (a) in one taxable period
22 ceases to be rental property in the following taxable pe-
23 riod, the property (and any associated debt) shall be treat-
24 ed as distributed by the business entity to its owners. Sec-
25 tion 1622(a) shall apply to such distribution.

1 **“Subchapter F—Insurance and Financial**
2 **Products**

“Sec. 1651. General rules.

“Sec. 1652. Fees for financial intermediation services.

3 **“SEC. 1651. GENERAL RULES.**

4 “(a) TAXABLE RECEIPTS.—Except in the case of a
5 financial intermediation business, taxable receipts do not
6 include financial receipts (as defined in section 1662).

7 “(b) BUSINESS PURCHASES.—Except in the case of
8 a financial intermediation business, business purchases do
9 not include the cost of financial instruments or payments
10 for use of money or capital, other than fees for financial
11 intermediation services.

12 **“SEC. 1652. FEES FOR FINANCIAL INTERMEDIATION SERV-**
13 **ICES.**

14 “(a) BUSINESS PURCHASE.—Business purchases in-
15 clude explicit fees and implicit fees for financial intermedi-
16 ation services (except to the extent that such fees are for
17 services treated as performed outside the United States
18 and not imported into the United States or for services
19 treated as exported.).

20 “(b) FINANCIAL INTERMEDIATION SERVICES.—Ex-
21 cept as provided in subchapter G, the term ‘financial inter-
22 mediation service’ shall be determined in accordance with
23 regulations promulgated by the Secretary.

1 **“Subchapter G—Financial Intermediation**
 2 **and Financial Institutions**

“Sec. 1661. Activities constituting a financial intermediation business.

“Sec. 1662. General rule for taxation.

“Sec. 1663. Special rule for banks.

“Sec. 1664. Insurance companies.

“Sec. 1665. Financial pass-through entities.

3 **“SEC. 1661. ACTIVITIES CONSTITUTING A FINANCIAL**
 4 **INTERMEDIATION BUSINESS.**

5 “(a) FINANCIAL INTERMEDIATION BUSINESS.—The
 6 providing of financial intermediation services shall be con-
 7 sidered a business activity. The gross profit of a business
 8 entity providing financial intermediation services shall be
 9 determined by taking into account the rules of this sub-
 10 chapter.

11 “(b) SEPARATE BUSINESS ACTIVITY.—The provision
 12 of financial intermediation services for unrelated persons
 13 shall be considered a separate business activity and a busi-
 14 ness shall be considered a separate entity with respect to
 15 such activity. An entity engaging in such business is re-
 16 ferred to in this chapter as a ‘financial intermediation
 17 business’.

18 “(c) DEFINITIONS.—

19 “(1) FINANCIAL INTERMEDIATION SERVICES.—

20 ‘Financial intermediation services’ include—

21 “(A) lending services,

22 “(B) insurance services,

“(C) market-making and dealer services,
and

“(D) any other service provided as business activity in which a person acts as an intermediary in—

“(i) the transfer of property, services, or financial assets, liabilities, risks or instruments (or income or expense derived therefrom) between two or more persons,
or

“(ii) the pooling of economic risk among other persons

and derives all or a portion of such person’s gross receipts from streams of income or expense, discounts, or other financial flows associated with the matter with respect to which such person is acting as an intermediary.

“(2) LENDING SERVICES.—‘Lending services’ means the regular making of loans and providing credit to, or taking deposits from customers, but does not include an installment or delayed payment arrangement provided by a seller of property or services under which additional charges or fees are imposed by the seller for the late payment.

1 “(3) MARKET-MAKING OR DEALER SERVICES.—

2 ‘Market-making or dealer services’ means services
3 provided by a person who—

4 “(A) regularly purchases financial instru-
5 ments from or sells financial instruments to
6 customers in the ordinary course of a trade or
7 business,

8 “(B) regularly offers to enter into, assume,
9 offset, assign, or otherwise terminate positions
10 in financial instruments with customers in the
11 ordinary course of a trade or business.

12 **“SEC. 1662. GENERAL RULE FOR TAXATION.**

13 “(a) IN GENERAL.—In the case of a financial inter-
14 mediation business, gross profits shall be computed by—

15 “(1) substituting financial receipts for taxable
16 receipts, and

17 “(2) including financial expenses as business
18 purchases.

19 “(b) DEFINITIONS.—

20 “(1) FINANCIAL RECEIPTS.—‘Financial re-
21 ceipts’ means all receipts other than amounts re-
22 ceived as contributions to capital.

23 “(2) FINANCIAL EXPENSES.—‘Financial ex-
24 penses’ include—

1 “(A) payments for principal and interest
2 that is properly allocable to the provision of fi-
3 nancial intermediation services,

4 “(B) the cost of and payments under fi-
5 nancial instruments (other than financial in-
6 struments in the person subject to the tax im-
7 posed under this chapter and any person re-
8 lated to such person),

9 “(C) claims and cash surrender values paid
10 in connection with insurance or reinsurance
11 services, and

12 “(D) amounts paid for reinsurance.

13 “(3) FINANCIAL INSTRUMENT.—‘Financial in-
14 strument’ means any—

15 “(A) share of stock in a corporation,

16 “(B) equity ownership in any widely held
17 or publicly traded partnership, trust, or other
18 business entity,

19 “(C) note, bond, debenture, or other evi-
20 dence of indebtedness,

21 “(D) interest rate, currency, or equity no-
22 tional principal contract,

23 “(E) evidence or interest in, or a derivative
24 financial instrument in, any financial instru-
25 ment described in subparagraph (A), (B), (C),

1 or (D), or any currency, including any option,
2 forward contract, short position, and any simi-
3 lar financial instrument in such a financial in-
4 strument or currency, and

5 “(F) a position which—

6 “(i) is not a financial instrument de-
7 scribed in subparagraph (A), (B), (C), (D)
8 or (E),

9 “(ii) is a hedge with respect to such
10 a financial instrument, and

11 “(iii) is clearly identified in the deal-
12 er’s records as being described in this sub-
13 paragraph before the close of the day on
14 which it was acquired or entered into.

15 “(c) INTERNATIONAL MATTERS.—For purposes of
16 this section in the case of a financial intermediation busi-
17 ness with activity in and outside the United States—

18 “(1) INCLUSION REGARDLESS OF SOURCE.—

19 “(A) Financial receipts shall be determined
20 without regard to whether they are received for
21 property or service provided in or outside the
22 United States, except that financial receipts do
23 not include amounts that—

24 “(i) are not taxable receipts (as deter-
25 mined without regard to this section), but

“(ii) would have been taxable receipts (as determined without regard to this section) if they had been received for services or property in the United States.

“(B) Financial expenses shall be determined without regard to whether they are received for property or services acquired in or outside the United States.

“(2) ALLOCATION.—Under regulations prescribed by the Secretary, gross profits (as determined without regard to this paragraph) shall be reduced by the amount of financial intermediation gross profit attributable to financial intermediation activity provided outside the United States.

“(3) GROSS PROFIT ATTRIBUTABLE TO FINANCIAL INTERMEDIATION ACTIVITY.—‘Gross profits attributable to financial intermediation activity’ means the excess of—

“(A) gross profits as determined under this section (but without regard to paragraph (2)), over

“(B) gross profits as determined without regard to this subchapter.

1 **“SEC. 1663. SPECIAL RULES FOR BANKS.**

2 “(a) IN GENERAL.—In the case of a bank, gross prof-
3 its shall be determined in accordance with section 1662,
4 except that—

5 “(1) FINANCIAL RECEIPTS.—Financial receipts
6 shall include only—

7 “(A) taxable receipts (as determined with-
8 out regard to this subchapter),

9 “(B) interest on loans made or acquired by
10 the bank,

11 “(C) gain on the sale of loans,

12 “(D) discount points received, and

13 “(E) any explicit fees for financial or fidu-
14 ciary services not included in subparagraphs
15 (A) through (E).

16 “(2) FINANCIAL EXPENSES.—Financial ex-
17 penses shall include only—

18 “(A) interest paid to depositors and on
19 other funds borrowed by the bank, and

20 “(B) reasonable additions to reserves for
21 bad debts.

22 “(3) FORECLOSURE PROPERTY.—Gross profits
23 shall properly take into account proceeds from the
24 operation or sale of foreclosure property.

25 “(b) BANK.—

“(1) IN GENERAL.—‘Bank’ means a bank or trust company incorporated and doing business under the laws of the United States, the District of Columbia, or any State, a substantial part of the business of which consists of receiving deposits and making loans and discounts, or of exercising fiduciary powers similar to those exercised by national banks under the authority of the Comptroller of the Currency, and which is subject by law to supervision and examination by State or Federal authority having supervision over banking institutions or credit unions. Such term includes domestic building and loan associations and credit unions.

“(2) OTHER ACTIVITIES.—If a bank is engaged in significant amounts of activities other than those described in paragraph (1), the bank shall be considered as a separate business entity with respect to such other activity.

“SEC. 1664. INSURANCE COMPANIES.

“(a) IN GENERAL.—In the case of companies providing insurance services, gross profits shall be determined in accordance with section 1662, except—

“(1) subsection (c) of section 1662 (relating to international operations) shall not apply, and

1 “(2) the rules of subchapter J (sourcing rules)
2 shall apply to determine financial receipts and finan-
3 cial expenses.

4 “(b) **RESULT INCONSISTENT WITH STATUTORY IN-**
5 **TENT.**—If an insurance company determines that the ap-
6 plication of subsection (a) produces results inconsistent
7 with the territorial approach of the business tax, it may
8 apply to the Secretary for permission to apply section
9 1662(c) in lieu of subsection (a).

10 **“SEC. 1665. FINANCIAL PASS-THROUGH ENTITIES.**

11 “(a) **IN GENERAL.**—In the case of a financial pass-
12 thru entity, gross profits shall be determined in accord-
13 ance with section 1662, except—

14 “(1) financial receipts shall include contribu-
15 tions to capital,

16 “(2) financial expenses shall include—

17 “(A) distributions to persons holding inter-
18 ests in the pass-thru entity,

19 “(B) investments in related entities (in-
20 cluding wholly owned entities) engaging in real
21 estate investment.

22 “(b) **PASS-THRU ENTITY.**—‘Pass-thru entity’ means
23 a business entity that is intended to serve as a conduit.
24 The Secretary shall prescribe regulations defining pass-
25 thru entity.

1 **“Subchapter H—Tax-Exempt Organizations**

“Sec. 1671. Exemption for governmental entities.

“Sec. 1672. Tax-exempt organizations.

“Sec. 1673. Tax on unrelated business activity.

“Sec. 1674. Unrelated business activity.

2 **“SEC. 1671. EXEMPTION FOR GOVERNMENTAL ENTITIES.**

3 “(a) STATES.—Except as provided in section 1672,
4 a state, political subdivision thereof and the District of
5 Columbia shall be exempt from taxation under this chap-
6 ter on any gross profits derived from the exercise of any
7 essential governmental function.

8 “(b) POSSESSIONS.—The government of any posses-
9 sion of the United States shall be exempt from taxation
10 under this chapter on any gross profits earned by the pos-
11 session.

12 **“SEC. 1672. TAX-EXEMPT ORGANIZATIONS.**

13 “(a) EXEMPTION FROM TAXATION.—An organiza-
14 tion described in subsection (c) or (d) of section 501 and
15 exempt from tax under section 501(a) shall be exempt
16 from taxation under this chapter.

17 “(b) TAX ON UNRELATED BUSINESS ACTIVITY.—An
18 organization exempt from taxation under subsection (a)
19 shall be subject to tax to the extent provided in sections
20 1675 and 1676, but shall be considered a tax-exempt orga-
21 nization for purposes of any law that refers to tax-exempt
22 organizations.

1 **“SEC. 1673. TAX ON UNRELATED BUSINESS ACTIVITY.**

2 “(a) IN GENERAL.—Each organization described in
3 subsection (b) shall be subject to the Business Consump-
4 tion Tax under section 1601 on its gross profits from its
5 unrelated business activity.

6 “(b) ORGANIZATIONS SUBJECT TO TAX.—This sec-
7 tion shall apply to—

8 “(1) organizations exempt from the business
9 tax under section 1672, other than instrumentalities
10 of the United States, and

11 “(2) colleges and universities which are instru-
12 mentalities of any government and corporations
13 owned by one or more such colleges or universities.

14 **“SEC. 1674. UNRELATED BUSINESS ACTIVITY.**

15 “(a) IN GENERAL.—‘Unrelated business activity’
16 means any trade or business the conduct of which is not
17 substantially related (aside from the need of such organi-
18 zation for income or funds or the use it makes of the prof-
19 its derived) to the exercise or performance by such organi-
20 zation of its charitable, educational, or other purpose or
21 function constituting the basis for its exemption under
22 section 501, except that such term does not include any
23 trade or business—

24 “(1) in which substantially all the work in car-
25 rying on such trade or business is performed for the
26 organization without compensation; or

“(2) which is carried on, in the case of an organization described in section 501(c)(3) or in the case of a college or university described in section 1673(b), by the organization primarily for the convenience of its members, students, patients, officers, or employees, which is the selling by the organization of items of work-related clothes and equipment and items normally sold through vending machines, through food dispensing facilities, or by snack bars, for the convenience of its members at their usual places of employment; or

“(3) which is the selling of merchandise, substantially all of which has been received by the organization as gifts or contributions.

“(b) ADVERTISING, ETC., ACTIVITIES.—For purposes of this section, ‘trade or business’ includes any activity which is carried on for the production of income from the sale of goods or the performance of services. For purposes of the preceding sentence, an activity does not lose identity as a trade or business merely because it is carried on within a larger aggregate of similar activities or within a larger complex of other endeavors which may, or may not, be related to the exempt purposes of the organization. Where an activity carried on for profit constitutes an unrelated trade or business, no part of such trade or business shall

1 be excluded from such classification merely because it does
2 not result in profit.

3 “(c) TRADE OR BUSINESS.—

4 “(1) CERTAIN BUSINESS ACTIVITIES.—An ac-
5 tivity shall not be considered a ‘trade or business’
6 solely because the activity is a business activity
7 (such as certain passive rental activity) that would
8 be subject to the business tax if conducted by a busi-
9 ness entity other than a tax-exempt organization.

10 “(2) REGULATIONS.—The Secretary shall pre-
11 scribe regulations defining a ‘trade or business.’
12 Such regulations shall be consistent with the provi-
13 sions under sections 511 through 513, except to the
14 extent such provisions are inconsistent with other
15 principles of the business tax.

16 “(3) TRADE SHOWS.—The conduct of trade
17 shows and conventions shall not be excluded from
18 the definition of trade or business.

19 “Subchapter I—Cooperatives

“Sec. 1681. Patronage dividends of cooperatives.

20 “SEC. 1681. PATRONAGE DIVIDENDS OF COOPERATIVES.

21 “(a) PATRONAGE DIVIDENDS PAID BY SUPPLY CO-
22 OPERATIVES.—A qualified patronage dividend paid by a
23 supply cooperative to a patron shall be treated as if it is

1 a refund of a portion of the amounts paid by the patron
2 for goods, services, or use of capital.

3 “(b) PATRONAGE DIVIDENDS PAID BY MARKETING
4 COOPERATIVES.—A qualified patronage dividend paid to
5 a patron by a marketing cooperative shall be treated as
6 an upward price adjustment in the amount received by the
7 patron for its goods marketed by the cooperative.

8 “(c) DIVIDEND TREATMENT.—Only the portion of a
9 patronage dividend that is not a qualified patronage divi-
10 dend shall be treated as a dividend under this chapter.

11 “(d) REGULATIONS.—The Secretary shall prescribe
12 regulations for the application of this section. The regula-
13 tions shall generally be consistent with subchapter T of
14 chapter 1 except to the extent that such rules are incon-
15 sistent with provisions of this chapter.

16 “Subchapter J—Sourcing Rules

“Sec. 1691. Exports of property or services.

“Sec. 1692. Imports of property or services.

“Sec. 1693. Import or export of services.

“Sec. 1694. International transportation services.

“Sec. 1695. International communications.

“Sec. 1696. Insurance.

“Sec. 1697. Banking services.

17 “SEC. 1691. EXPORTS OF PROPERTY OR SERVICES.

18 “(a) GENERAL RULE.—Taxable receipts do not in-
19 clude amounts received by the exporter thereof for prop-
20 erty or services exported from the United States for use
21 or consumption outside the United States.

1 “(b) EXPORT THROUGH NONBUSINESS ENTITY.—

2 For purposes of subsection (a), if property or services are
3 sold to a governmental entity or a tax-exempt organization
4 for export and are exported other than in an activity of
5 such entity which is subject to the business tax, then the
6 seller of such property or services is deemed to be the ex-
7 porter thereof.

8 **“SEC. 1692. IMPORTS OF PROPERTY OR SERVICES.**

9 “(a) IN GENERAL.—The import of property or serv-
10 ices for consumption in the United States shall constitute
11 a business purchase if such property or service is to be
12 used in a business activity in the United States. Property
13 being held for sale or retail by a business entity that is
14 in the business of selling goods shall be considered held
15 for ‘use in a business activity’.

16 “(b) AMOUNT OF BUSINESS PURCHASE.—

17 “(1) IN GENERAL.—The cost of business pur-
18 chases with respect to the import of property or
19 services for use or consumption in the United States
20 is the customs value, price or other amount used for
21 purposes of determining the import tax under sec-
22 tion 1701 or section 1702.

23 “(2) IMPORT TAX.—The cost of business pur-
24 chases does not include any import tax paid. No de-
25 duction shall be allowed with respect to property or

1 service imported by a business entity unless the im-
2 port tax is paid with respect to such import.

3 **“SEC. 1693. IMPORT OR EXPORT OF SERVICES.**

4 “(a) IN GENERAL.—Except as otherwise provided in
5 this subchapter or in rules prescribed under subchapter
6 G (relating to financial intermediation business), services
7 shall not be treated as imported or exported from the loca-
8 tion in which they are performed.

9 “(b) IMPORT OF SERVICES.—A business entity shall
10 be treated as importing a service if—

11 “(1) the entire benefit of the service will be re-
12 alized in the United States, and

13 “(2) the benefit will be realized in connection
14 with the United States business activities of the
15 business entity.

16 “(c) EXPORT OF SERVICES.—A business will be
17 treated as exporting a service if—

18 “(1) the entire benefit of the service will be re-
19 alized outside of the United States, and

20 “(2) the benefit will be realized solely in con-
21 nection with the activities of the purchaser occurring
22 outside the United States.

23 “(d) SERVICES ACQUIRED FROM SERVICE PROVIDER
24 THAT PROVIDES SERVICES IN AND OUTSIDE THE
25 UNITED STATES.—

1 “(1) IN GENERAL.—If a business entity ac-
2 quires services from a service provider that provides
3 services both in and outside the United States and
4 the service provider shows on the invoice where the
5 services are provided—

6 “(A) the business entity shall treat the
7 services as provided where stated on the invoice,
8 and

9 “(B) the service provider shall treat as tax-
10 able receipts any services listed as provided in
11 the United States.

12 “(2) NO INVOICE.—If a business entity acquires
13 services from a service provider that provides serv-
14 ices both in and outside the United States and the
15 service provider does not show on an invoice where
16 such services are provided—

17 “(A) the business entity shall treat the
18 services as if provided in the location to which
19 payment is sent, and

20 “(B) the service provider shall treat as tax-
21 able receipts any payments received in the
22 United States.

23 **“SEC. 1694. INTERNATIONAL TRANSPORTATION SERVICES.**

24 “(a) TRANSPORTATION OF PROPERTY.—

25 “(1) TAXABLE RECEIPTS.—

1 “(A) EXPORTS.—Taxable receipts do not
2 include receipts from the transportation of
3 property exported from the United States.

4 “(B) IMPORTS.—Taxable receipts include
5 receipts from transportation of property im-
6 ported into the United States only if such costs
7 are not taken into account in determining the
8 import tax.

9 “(C) PRESUMPTIONS.—The Secretary shall
10 prescribe regulations describing situations in
11 which a transporter of property must presume
12 that no import tax has been paid on the cost of
13 its services.

14 “(2) BUSINESS PURCHASES.—

15 “(A) EXPORTS.—Business purchases do
16 not include amounts paid or incurred for the
17 cost of transportation of property exported from
18 the United States.

19 “(B) IMPORTS.—Amounts paid or incurred
20 for transportation of goods imported into the
21 United States, shall constitute a cost of busi-
22 ness purchase only to the extent that they are
23 taken into account in determining the customs
24 value for purposes of section 1701(a) (relating
25 to the import tax).

1 “(b) TRANSPORTATION OF PASSENGERS.—

2 “(1) TAXABLE RECEIPTS.—Taxable receipts—

3 “(A) include receipts from the transpor-
4 tation of passengers from the United States to
5 a destination outside the United States, but

6 “(B) do not include receipts from the
7 transportation of passengers from outside the
8 United States to a destination in the United
9 States.

10 “(2) BUSINESS PURCHASES.—Business pur-
11 chases—

12 “(A) include amounts paid or incurred in
13 a business activity for the transportation of
14 passengers from the United States to a destina-
15 tion outside the United States, but

16 “(B) do not include amounts paid or in-
17 curred for transportation of passengers from
18 outside the United States to a destination in
19 the United States.

20 “(3) SIMPLIFYING RULES.—The Secretary may
21 provide rules that simplify this subsection, including
22 rules under which—

23 “(A) half of receipts attributable to trans-
24 portation to or from the United States are
25 treated as taxable receipts,

“(B) half of the cost for business trips to and from the United States are treated as business purchases, and

“(C) all transportation expenses of a business entity that has no regular business outside the United States are treated as business purchases.

“SEC. 1695. INTERNATIONAL COMMUNICATIONS.

“(a) IN GENERAL.—For purposes of section 1692, communications services shall be treated as provided at the point of origin of the communications and shall not be treated as imported or exported.

“(b) COMMUNICATIONS SERVICES.—Communications services include—

“(1) telephone communications services,

“(2) courier services (except in the case of transportation of property that is imported or exported),

“(3) satellite transmission services,

“(4) telegraph services,

“(5) facsimile transmission services, and

“(6) other similar services.

“SEC. 1696. INSURANCE.

“(a) IN GENERAL.—Insurance services will be treated as provided at the location of the insurance company

1 providing the services. Except as the Secretary may pre-
2 scribe by regulations, insurance companies will be treated
3 as providing services at the location to which insurance
4 payments are made.

5 “(b) INSURED RISKS IN THE UNITED STATES.—If
6 insurance services are provided outside the United States
7 and the insured risk is located in the United States—

8 “(1) the insurance service shall be treated as
9 imported,

10 “(2) the insurance premiums shall be subject to
11 the import tax, and

12 “(3) payments of insurance benefits shall not be
13 treated as imported.

14 “(c) INSURED RISK OUTSIDE THE UNITED
15 STATES.—If insurance services are provided inside the
16 United States and the insured risk is located outside the
17 United States—

18 “(1) insurance services shall be treated as ex-
19 ported,

20 “(2) payments of insurance benefits shall be
21 treated as payments for services outside the United
22 States, and shall not be deducted as business pur-
23 chases.

24 “(d) INSURANCE SERVICES.—Insurance services
25 means the provision of insurance and services related to

1 insurance other than insurance that is treated as a savings
2 asset.

3 **“SEC. 1697. BANKING SERVICES.**

4 “The Secretary shall prescribe regulations on the lo-
5 cation of banking services and the extent to which such
6 services are to be treated as imported or exported.

7 **“Subchapter K—Import Tax**

“Sec. 1701. Imposition of tax on property.

“Sec. 1702. Imposition of tax on import of services.

“Sec. 1703. General rules for the import tax.

8 **“SEC. 1701. IMPOSITION OF TAX ON PROPERTY.**

9 “(a) GENERAL RULE.—There is hereby imposed a
10 tax equal to 8.5 percent of the customs value of all prop-
11 erty entered into the United States for consumption, use
12 or warehousing.

13 “(b) LIABILITY FOR TAX.—The tax imposed on the
14 import of property by subsection (a) shall be paid by the
15 person entering the property into the United States for
16 consumption, use or warehousing. Such tax shall be due
17 and payable at the time of import.

18 “(c) IMPORTS OF PREVIOUSLY EXPORTED PROP-
19 erty.—In the case of any article that is classified under
20 a heading or subheading of subchapter I or II of chapter
21 98 of the Tariff Schedules of the United States, the tax
22 under this section shall be imposed only on that portion
23 of the customs value of such article that is dutiable under
24 such heading or subheading.

1 “(d) IMPORTS FOR PERSONAL CONSUMPTION.—The
 2 import tax imposed by this section shall not apply to any
 3 article entered into the United States duty free under sub-
 4 chapters I through VII of chapter 98 of the Tariff Sched-
 5 ules of the United States.

6 **“SEC. 1702. IMPOSITION OF TAX ON IMPORT OF SERVICES.**

7 “(a) GENERAL RULE.—There is hereby imposed a
 8 tax equal to 8.5 percent of the cost of all services treated
 9 as imported into the United States during the taxable pe-
 10 riod of the service recipient.

11 “(b) LIABILITY FOR THE TAX.—The tax on the im-
 12 port of services imposed by subsection (a) shall be paid
 13 by the person who receives the imported services. The tax
 14 shall be payable as if it were an addition to the business
 15 tax imposed by section 1601.

16 “(c) IMPORTED SERVICES.—For purposes of this sec-
 17 tion, services shall be treated as imported if they are treat-
 18 ed as imported under section 1693 (general rules on im-
 19 port of services) or section 1696 (related to insurance).

20 **“SEC. 1703. GENERAL RULES FOR THE IMPORT TAX.**

21 “‘Import tax’ means the tax imposed by section 1701
 22 on the import of property and the tax imposed by section
 23 1702 on the import of services.

24 **“Subchapter L—Transition Rules**

“Sec. 1711. Amortization of transition basis.

1 **“SEC. 1711. AMORTIZATION OF TRANSITION BASIS.**

2 “(a) **TRANSITION BASIS DEDUCTION.**—The ‘transi-
3 tion basis deduction’ for a taxable period is the sum of
4 the amortization allowance determined under this section
5 for the taxable period.

6 “(b) **TREATMENT OF INTEREST FLOWS.**—Interest
7 flows between non-financial businesses shall be treated as
8 under current law, phased out over 5 years.

9 “(c) **AMORTIZATION RULES.**—The amortization al-
10 lowance to all property placed in service before the effec-
11 tive date of this section shall be the lesser of—

12 “(1) the amortization period under current law
13 remaining on such date, or

14 “(2) a 5-year ratable period beginning on such
15 date.

16 **“Subchapter M—Rules for Administration,**
17 **Consolidated Returns**

“Sec. 1721. Returns, due dates, etc.

“Sec. 1722. Consolidated returns.

“Sec. 1723. Seller liable for tax.

“Sec. 1724. Tax invoices.

“Sec. 1725. Time for filing return and claiming credit; deposits of tax.

“Sec. 1726. Secretary to be notified of certain events.

“Sec. 1727. Regulations.

18 **“SEC. 1721. RETURNS, DUE DATES, ETC.**

19 “(a) **IN GENERAL.**—Until subtitle F is amended to
20 reflect the adoption of this chapter, the rules of subtitle
21 F relating to C corporations shall apply to business enti-
22 ties with respect to—

- 1 “(1) returns and records;
- 2 “(2) time and place for paying tax;
- 3 “(3) assessment of taxes;
- 4 “(4) collections and liens;
- 5 “(5) abatements, credits, and refunds;
- 6 “(6) interest on underpayments and overpay-
- 7 ments;
- 8 “(7) additions to tax and penalties;
- 9 “(8) closing agreements and compromises;
- 10 “(9) crimes;
- 11 “(10) judicial proceedings;
- 12 “(11) discovery of liability and enforcement;
- 13 and
- 14 “(12) estimated taxes.

15 “(b) INDIVIDUALS ENGAGING IN BUSINESS ACTIVI-
16 TIES.—Under rules prescribed by the Secretary, individ-
17 uals engaging in business activities on their own or with
18 their spouses shall be permitted to file their business tax
19 returns with their individual tax returns and shall be sub-
20 ject to estimated tax rules for individual income tax re-
21 turns.

22 **“SEC. 1722. CONSOLIDATED RETURNS.**

23 “(a) IN GENERAL.—Business entities may file con-
24 solidated returns of business tax if they would have been
25 permitted to file consolidated returns under section 1501

1 and such section were applied by treating each business
2 entity as a corporation and its owners or partners as
3 shareholders.

4 “(b) FINANCIAL INSTITUTIONS.—Financial inter-
5 mediation businesses may be included in consolidated re-
6 turns, but each financial intermediation business must
7 compute its gross profits separately.

8 “(c) INTERCOMPANY TRANSACTIONS.—In computing
9 the gross profits of a consolidated group, intercompany
10 transactions can be taken into account, or at the election
11 of the filer, be disregarded (except in the case of trans-
12 actions with financial intermediation businesses).

13 **“SEC. 1723. SELLER LIABLE FOR TAX.**

14 “The person selling the property or services shall be
15 liable for the tax imposed by section 1601.

16 **“SEC. 1724. TAX INVOICES.**

17 “(a) SELLER MUST GIVE PURCHASER TAX IN-
18 VOICE.—Any taxable person engaging in a taxable trans-
19 action shall give the purchaser a tax invoice with respect
20 to such transaction if the seller has reason to believe that
21 the purchaser is a taxable person.

22 “(b) CONTENT OF INVOICE.—The tax invoice re-
23 quired by subsection (a) with respect to any transaction
24 shall set forth—

1 “(1) the name and identification number of the
2 seller,

3 “(2) the name of the purchaser,

4 “(3) the amount of the tax imposed by section
5 1601, and

6 “(4) such other information as may be pre-
7 scribed by regulations.

8 “(c) NO CREDIT WITHOUT INVOICE.—

9 “(1) IN GENERAL.—Except as provided in para-
10 graphs (2) and (3), a purchaser may claim a credit
11 with respect to a transaction only if the purchaser—

12 “(A) has received from the seller and has
13 in the purchaser’s possession a tax invoice
14 which meets the requirements of subsection (b),
15 and

16 “(B) is named as the purchaser in such in-
17 voice.

18 “(2) EMPLOYEES OR OTHER AGENTS NAMED IN
19 INVOICES.—To the extent provided in regulations,
20 the naming of an employee or other agent of the
21 purchaser shall be treated as the naming of the pur-
22 chaser.

23 “(3) WAIVER OF INVOICE REQUIREMENT IN
24 CERTAIN CASES.—To the extent provided in regula-
25 tions, paragraph (1) shall not apply—

“(A) where the purchaser without fault on the purchaser’s part fails to receive or fails to have in the purchaser’s possession a tax invoice,

“(B) to a taxable transaction (or category of transactions) where—

“(i) the amount involved is de minimis, or

“(ii) the information required by subsection (b) can be reliably established by sampling or by another method and can be adequately documented.

“(d) **TIME FOR FURNISHING INVOICE.**—Any invoice required to be furnished by subsection (a) with respect to any transaction shall be furnished not later than 15 business days after the tax point for such transaction.

“SEC. 1725. TIME FOR FILING RETURN AND CLAIMING CREDIT; DEPOSITS OF TAX.

“(a) **FILING RETURN.**—Before the first day of the second calendar month beginning after the close of each taxable period, each taxable person shall file a return of the tax imposed by section 1601 on taxable transactions having a tax point within such taxable period.

“(b) **CREDIT ALLOWED FOR TAXABLE PERIOD IN WHICH PURCHASER RECEIVES INVOICE.**—

1 “(1) IN GENERAL.—Except as provided in para-
2 graph (2), a credit allowable by section 1606 with
3 respect to a transaction may be allowed only for the
4 first taxable period by the close of which the tax-
5 payer—

6 “(A) has paid or accrued amounts properly
7 allocable to the tax imposed by section 1601
8 with respect to such transaction, and

9 “(B) has a tax invoice (or equivalent) with
10 respect to such transaction.

11 “(2) USE FOR LATER PERIOD.—Under regula-
12 tions, a credit allowable by section 1606 may be al-
13 lowed for a period after the period set forth in para-
14 graph (1).

15 “(c) TAXABLE PERIOD.—For purposes of this chap-
16 ter—

17 “(1) IN GENERAL.—The term ‘taxable period’
18 means a calendar quarter.

19 “(2) EXCEPTION.—

20 “(A) ELECTION OF 1-MONTH PERIOD.—If
21 the taxpayer so elects, the term ‘taxable period’
22 means a calendar month.

23 “(B) OTHER PERIODS.—To the extent pro-
24 vided in regulations, the term ‘taxable period’

includes a period, other than a calendar quarter or month, selected by the taxpayer.

“(d) TAX POINT.—For purposes of this chapter—

“(1) CHAPTER 1 RULES WITH RESPECT TO SELLER GOVERN.—Except as provided in paragraph (2), the tax point for any sale of property or services is the earlier of—

“(A) the time (or times) when any income from the sale should be treated by the seller as received or accrued (or any loss should be taken into account by the seller) for purposes of chapter 1, or

“(B) the time (or times) when the seller receives payment for the sale.

“(2) IMPORTS.—In the case of the importing of property, the tax point is when the property is entered, or withdrawn from warehouse, for consumption in the United States.

“(e) MONTHLY DEPOSITS REQUIRED.—To the extent provided in regulations, monthly deposits may be required of the estimated liability for any taxable period for the tax imposed by section 1601.

1 **“SEC. 1726. SECRETARY TO BE NOTIFIED OF CERTAIN**
2 **EVENTS.**

3 “To the extent provided in regulations, each person
4 engaged in a business shall notify the Secretary (at such
5 time or times as may be prescribed by such regulations)
6 of any change in the form in which a business is conducted
7 or any other change which might affect the liability for
8 the tax imposed by section 1601 or the amount of such
9 tax or any credit against such tax, or otherwise affect the
10 administration of such tax in the case of such person.

11 **“SEC. 1727. REGULATIONS.**

12 “The Secretary shall prescribe such regulations as
13 may be necessary to carry out the purposes of this chap-
14 ter.

15 **“Subchapter N—Definitions and Rules of**
16 **Application**

“Sec. 1731. Definitions.

“Sec. 1732. Rules of application.

17 **“SEC. 1731. DEFINITIONS.**

18 “If a term that is used but not defined in this chapter
19 or in section 7701 is defined in chapter 1, the definition
20 in chapter 1 shall apply except if manifestly incompatible
21 with the intent of the provision in which the term is used.

1 **“SEC. 1732. RULES OF APPLICATION.**

2 “(a) DEFINITIONS.—Any definition included in this
3 chapter shall apply for all purposes of this chapter un-
4 less—

5 “(1) such definition is limited to the purposes
6 of a particular chapter, section, or subsection, or

7 “(2) the definition clearly would not be applica-
8 ble in a particular context.

9 “(b) INTERPRETATIONS CONSISTENT WITH INTER-
10 NAL REVENUE CODE OF 1986.—Terms not defined in this
11 chapter, chapter 1 or section 7701, but defined elsewhere
12 in this title, shall be interpreted in a manner consistent
13 with this title, except to the extent such interpretation
14 would be inconsistent with the principles and purposes of
15 this chapter.”.

16 (b) The amendments made by this section shall be
17 effective on January 1, 2009, except to the extent other-
18 wise specifically provided in the text of such amendments.

19 **SEC. 603. REPEAL OF CHAPTER 6.**

20 Chapter 6 of the Code (relating to consolidated re-
21 turns) is repealed as of January 1, 2008.

22 **SEC. 604. REVISIONS TO THE CODE.**

23 Not later than January 1, 2009, the Secretary shall
24 submit to Congress proposed changes in the Internal Rev-
25 enue Code of 1986 that—

1 (1) revise subtitles C through J of such Code
2 to fully reflect the amendments to subtitle A of such
3 Code made by this title and the repeal of subtitle B
4 of such Code,

5 (2) include statutory definitions or rules in
6 cases where the Secretary concludes that the defini-
7 tions or rules cannot or should not be addressed by
8 regulation,

9 (3) revise chapter 2 of such Code (relating to
10 the self-employment tax) to conform to changes
11 made by this title, and

12 (4) revise chapter 3 of such Code (relating to
13 withholding on nonresident aliens and foreign cor-
14 porations) to reflect changes made by this title.

15 **SEC. 605. APPLICATION OF SUBTITLE F.**

16 Until such time as subtitle F of the Internal Revenue
17 Code of 1986 is amended to reflect the amendments made
18 by this title, the provisions of such subtitle F shall be
19 treated as generally applying to chapter 7 of subtitle A
20 of such Code—

21 (1) without regard to specific cross references,

22 (2) without regard to provisions relating to
23 partnerships, and

24 (3) as if the business tax under such chapter 7
25 were the corporate income tax and all business enti-

ties were corporations (except for purposes of collection, in which case the owners of noncorporate entities shall be obligated for taxes owned by the entities to the same extent as they would if the entity owed the tax prior to the amendment of the Code).

SEC. 606. EFFECTIVE DATES.

(a) IN GENERAL.—Except as otherwise provided in this title, the amendments made by this title shall be effective on and after January 1, 2009, with respect to tax years beginning on such date.

(b) SPECIAL RULES FOR BUSINESSES WITH 52–53 WEEK YEAR.—If a business uses a 52–53 week taxable period the amendments made by this title shall apply to the business with respect to its tax year beginning in the last week in December except with respect to any transactions occurring during 2008 that were structured to take advantage of the application of this title to such business at a time when this title did not apply to other businesses or to individuals.

TITLE VII—BUDGET ENFORCEMENT

SEC. 701. SHORT TITLE; TABLE OF CONTENTS; DEFINITIONS.

(a) SHORT TITLE.—This title may be cited as the “Budget Control Act of 2008”.

1 (b) TABLE OF CONTENTS.—

- Sec. 701. Short title; table of contents; definitions.
 Sec. 702. Long-term projections.
 Sec. 703. Preview spending reduction order.
 Sec. 704. Final spending reduction order.
 Sec. 705. Eliminating excess spending amounts.
 Sec. 706. Special procedures.
 Sec. 707. Suspension in the event of war or low growth.
 Sec. 708. Alternate spending reduction legislation in the House of Representatives.
 Sec. 709. Alternate spending reduction legislation in the Senate.
 Sec. 710. General provisions.
 Sec. 711. Effective date.

2 (c) DEFINITIONS.—As used in this part:

3 (1) The terms “budget authority” and “out-
 4 lays” have the meanings given to such terms in sec-
 5 tion 3 of the Congressional Budget Act of 1974.

6 (2) The term “budgetary resources” means new
 7 budget authority, budget authority, unobligated bal-
 8 ances, direct spending authority, and obligation limi-
 9 tations.

10 (3) The term “spending reduction” refers to
 11 the cancellation of budgetary resources provided by
 12 discretionary appropriations or direct spending.

13 (4) The term “discretionary appropriations”
 14 means budgetary resources provided in appropriation
 15 Acts.

16 (5) The term “direct spending” means budget
 17 resources provided in law other than appropriation
 18 Acts;

19 (6) The term “gross domestic product”, with
 20 respect to any fiscal year, means the gross national

1 product during such fiscal year consistent with De-
2 partment of Commerce definitions.

3 (7) The term “account” means an item for
4 which appropriations are made in any appropriation
5 Act and, for items not provided for in appropriation
6 Acts, such term means an item for which there is a
7 designated budget account identification code num-
8 ber in the President’s budget.

9 (8) The term “budget year” means, with re-
10 spect to a session of Congress, the fiscal year of the
11 Government that starts on October 1 of the calendar
12 year in which that session begins.

13 (9) The term “current year” means, with re-
14 spect to a budget year, the fiscal year that imme-
15 diately precedes that budget year.

16 (10) The term “OMB” means the Director of
17 the Office of Management and Budget.

18 (11) The term “CBO” means the Director of
19 the Congressional Budget Office.

20 (12) The term “baseline” means the baseline
21 estimates OMB or CBO, as applicable, annually sub-
22 mits to Congress consistent with section 257 of the
23 Balanced Budget and Emergency Deficit Control
24 Act of 1985.

1 (13) The term “guideline period” means the pe-
2 riod of fiscal years as set forth in section 702(f).

3 (14) The term “excess spending amount”
4 means the amount of outlays a projected spending
5 amount exceeds the guideline spending amount for a
6 fiscal year within the guideline period.

7 (15) The term “projected spending amount”
8 means the amount of total outlays of the Federal
9 Government for a fiscal year within the guideline pe-
10 riod and as calculated in section 702(c).

11 (16) The term “guideline spending amount”
12 means the amount of total outlays of the Federal
13 Government for a fiscal year as a percentage of the
14 gross domestic product for such fiscal year within
15 the guideline period.

16 (17) The term “preview order” means a pre-
17 view spending reduction order as defined in section
18 703.

19 (18) The term “final order” means a final
20 spending reduction order as defined in section 704.

21 **SEC. 702. LONG-TERM PROJECTIONS.**

22 (a) OMB LONG-TERM ECONOMIC GROWTH AND
23 BUDGET PROJECTIONS.—For each fiscal year within the
24 guideline period, OMB shall prepare a report that sets
25 forth the amount of total spending of the Government in

1 outlays, within the budget as submitted by the President
2 annually under section 1105(a) of title 31, United States
3 Code.

4 (b) CBO LONG-TERM ECONOMIC GROWTH AND
5 BUDGET PROJECTIONS.—By February 1 of each calendar
6 year, for each fiscal year within the guideline period, CBO
7 shall prepare a report that sets forth the amount of total
8 spending of the Government in outlays, and the amount
9 of spending of each program within the budget as CBO
10 prepares its annual baseline and its reestimate of the
11 President's budget.

12 (c) INCLUSION IN THE FINAL SPENDING REDUC-
13 TION.—Each report prepared pursuant to subsections (a)
14 and (b) shall be included in the preview spending reduc-
15 tion and final spending reduction, as applicable, set forth
16 in sections 703 and 704.

17 **SEC. 703. PREVIEW SPENDING REDUCTION ORDER.**

18 (a) ISSUANCE.—Not later than 15 calendar days
19 after the date Congress adjourns to end a session of Con-
20 gress, every fiscal year other than which a final order is
21 issued, OMB shall issue a preview spending reduction
22 order.

23 (b) CONTENTS.—A preview order shall be subject to
24 the same requirements as that set forth for a final spend-
25 ing reduction in section 704.

1 (c) AVAILABILITY.—A preview order required to be
2 issued by this section shall be submitted by OMB to the
3 House of Representatives and the Senate on the day it
4 is issued.

5 (d) EFFECT.—A preview order shall not cause a
6 spending reduction.

7 **SEC. 704. FINAL SPENDING REDUCTION ORDER.**

8 (a) ISSUANCE.—Not later than 15 calendar days
9 after the date Congress adjourns to end a session of Con-
10 gress, every fifth fiscal year following the fiscal year in
11 which this Act is enacted, OMB shall issue a final spend-
12 ing reduction order to eliminate an excess spending
13 amount (if any) as calculated under subsection (b).

14 (b) CONTENT OF A FINAL SPENDING CONTROL
15 ORDER.—In addition to any other information required
16 under this title to be included in any final spending control
17 order, this order shall contain, for the budget year, for
18 each account to be subject to a spending reduction, esti-
19 mates of the baseline level of budgetary resources and re-
20 sulting outlays and the amount of budgetary resources to
21 be subject to a spending reduction and resulting outlay
22 reductions. The order shall also contain estimates of the
23 effects on outlays of the spending reduction in each out-
24 year for direct spending programs.

1 (c) AVAILABILITY.—A final order required to be
2 issued by this section shall be submitted by OMB to the
3 House of Representatives, the Senate, and the President
4 on the day it is issued.

5 (d) SPENDING CONTROL BUFFER.—If there is an ex-
6 cess spending amount in only one fiscal year or in one
7 period of two successive fiscal years during the guideline
8 period, and such amount or amounts exceed the guideline
9 spending amount by .1 percent of GDP or less, then the
10 final spending reduction shall be issued, but shall not take
11 effect.

12 (e) PRESIDENTIAL ORDER.—On the date specified in
13 subsection (a), if in its final spending reduction OMB cal-
14 culates there exists an impermissible excess spending
15 amount, the President shall issue an order fully imple-
16 menting without change all spending reductions required
17 by the OMB calculations set forth in that report. This
18 order shall be effective on the first day of the fiscal year
19 following the fiscal year in which the order is issued.

20 **SEC. 705. ELIMINATING EXCESS SPENDING AMOUNTS.**

21 (a) ENFORCING A SPENDING REDUCTION FOR DIS-
22 CRETIONARY SPENDING.—

23 (1) ELIMINATING A DISCRETIONARY SPENDING
24 EXCESS.—OMB shall include in its final order a re-
25 quirement that each discretionary account shall be

1 reduced by an amount of budget authority calculated
2 by multiplying the baseline level of budgetary re-
3 sources in that account at that time by the uniform
4 percentage necessary to reduce outlays sufficient to
5 eliminate an excess spending amount.

6 (2) PART-YEAR APPROPRIATIONS.—If, on the
7 date a final spending reduction is issued, there is in
8 effect an Act making or continuing appropriations
9 for part of a fiscal year for any budget account, then
10 the dollar spending reduction calculated for that ac-
11 count under paragraph (1) shall be subtracted
12 from—

13 (A) the annualized amount otherwise avail-
14 able by law in that account under that or a sub-
15 sequent part-year appropriation; and

16 (B) when a full-year appropriation for that
17 account is enacted, from the amount otherwise
18 provided by the full-year appropriation.

19 (b) ELIMINATING A DIRECT SPENDING EXCESS.—
20 OMB shall include in its final order a requirement that
21 each direct spending account shall be reduced by an
22 amount of budget authority calculated by multiplying the
23 baseline level of budgetary resources in that account at
24 that time by the uniform percentage necessary to reduce
25 outlays sufficient to eliminate an excess spending amount.

1 (c) UNIFORM PERCENTAGE.—The percentage re-
2 quired to produce a spending reduction, as ordered by a
3 final order, shall be calculated by OMB by adding all
4 budgetary resources of the Government, and reducing that
5 amount by an amount sufficient to reduce the total
6 amount of outlays of the Government to equal, or lower,
7 a level of outlays than the amount set forth in the guide-
8 line period.

9 **SEC. 706. SPECIAL PROCEDURES.**

10 (a) SOCIAL SECURITY BENEFITS.—Benefits payable
11 under the old-age, survivors, and disability insurance pro-
12 gram established under title II of the Social Security Act,
13 shall be exempt from a spending reduction required by a
14 final order if—

15 (1) the Social Security Trustees issue, in the
16 fiscal year such order is issued, a statement that the
17 old-age, survivors, and disability Trust Funds have
18 achieved or will achieve solvency under current law
19 within the guideline period beginning in the year fol-
20 lowing the year the final order is issued;

21 (2) it would require an amount that exceeds
22 such amount as the Trustees determine are required
23 to achieve solvency in that period, as determined by
24 the Social Security Trustees; and

1 (3) it would require a spending reduction of an
2 amount greater than 1 percent of budgetary re-
3 sources in any fiscal year within the guideline pe-
4 riod.

5 (b) NET INTEREST.—A spending reduction shall not
6 cause any effect on payments for net interest (as set forth
7 in function 900).

8 (c) OBLIGATED BALANCES.—Obligated balances of
9 budget authority carried over from prior fiscal years shall
10 be exempt from a spending reduction under any order
11 issued under this title.

12 (d) APPLICATION TO FAST GROWING PROGRAMS.—
13 Any program whose growth in the budget year is less than
14 the rate of inflation as determined by OMB, shall be ex-
15 empt from a spending reduction issued under this title.

16 (e) LIMITATION ON SPENDING REDUCTIONS.—No
17 program shall be subject to a spending reduction of more
18 than 1 percent of its budgetary resources.

19 (f) UNIFORM PERCENTAGE RATE OF REDUCTION
20 AND OTHER LIMITATIONS.—All spending reductions with
21 respect to a fiscal year shall be made so as to ensure that
22 outlays for each program, project, activity, or account in-
23 volved are reduced by a percentage rate that is uniform
24 for all such programs, projects, activities, and accounts,
25 and may not be made so as to achieve a percentage rate

1 of reduction in any such item exceeding the rate specified
2 in the order.

3 (g) EFFECT OF A FINAL ORDER.—Upon the issue
4 of a final order, a spending reduction shall be ordered for
5 all nonexempt spending accounts. The spending reduction
6 shall be effective as follows:

7 (1) Budgetary resources subject to a spending
8 reduction to any discretionary account shall be per-
9 manently cancelled.

10 (2) The same percentage spending reduction
11 shall apply to all programs, projects, and activities
12 within a budget account (with programs, projects,
13 and activities as delineated in the appropriation Act
14 or accompanying report for the relevant fiscal year
15 covering that account, or for accounts not included
16 in appropriation Acts, as delineated in the most re-
17 cently submitted President's budget).

18 (3) Administrative regulations implementing a
19 spending reduction shall be made within 120 days of
20 the issue of a final order.

21 (4) Budgetary resources subject to a spending
22 reduction in revolving, trust, and special fund ac-
23 counts and offsetting collections subject to a spend-
24 ing reduction in appropriation accounts shall not be
25 available for obligation during the fiscal year in

1 which the spending reduction is issued, and shall be
2 available in subsequent years only to the extent as
3 provided by law.

4 **SEC. 707. SUSPENSION IN THE EVENT OF WAR OR LOW**
5 **GROWTH.**

6 (a) PROCEDURES IN THE EVENT OF A LOW GROWTH
7 REPORT.—

8 (1) LOW GROWTH REPORT.—Whenever OMB or
9 CBO issues a low-growth report under section
10 710(a), the majority leader of the House of Rep-
11 resentatives and the majority leader of the Senate
12 shall introduce a joint resolution suspending the rel-
13 evant provisions of this title, titles III and IV of the
14 Congressional Budget Act of 1974, and section 1103
15 of title 31, United States Code.

16 (2) FORM OF JOINT RESOLUTION.—

17 (A) The matter after the resolving clause
18 in any joint resolution introduced pursuant to
19 paragraph (1) shall be as follows: “That the
20 Congress declares that the conditions specified
21 in section 711(a) of the Budget Control Act of
22 2008 are met, and the implementation of the
23 Congressional Budget and Impoundment Con-
24 trol Act of 1974, chapter 11 of title 31, United

1 States Code, and the Budget Control Act of
2 2008 is hereby suspended.”.

3 (B) The title of the joint resolution shall
4 be “A joint resolution suspending certain provi-
5 sions of law pursuant to section 711(a) of the
6 Budget Control Act of 2008.”

7 (3) A joint resolution introduced pursuant to
8 paragraph (1), an amendment thereto, or a con-
9 ference report thereon, shall only be passed if it re-
10 ceives not less than three-fifths vote of approval of
11 the total number of Members of the House of Rep-
12 resentatives and the Senate.

13 (b) SUSPENSION OF SPENDING REDUCTION PROCE-
14 DURES.—Upon the enactment of a declaration of war or
15 a joint resolution described in subsection (a)—

16 (1) the subsequent issuance of any final spend-
17 ing reduction is precluded;

18 (2) titles III and IV of the Congressional Budg-
19 et Act of 1974 are suspended; and

20 (3) section 1103 of title 31, United States
21 Code, is suspended.

22 (c) RESTORATION OF SPENDING CONTROL PROCE-
23 DURES.—

24 (1) In the event of a suspension of spending
25 control procedures due to a declaration of war, then,

1 effective with the fifth fiscal year that begins in the
2 session after the state of war is concluded, the provi-
3 sions of subsection (b) triggered by that declaration
4 of war are no longer effective.

5 (2) In the event of a suspension of spending
6 control procedures due to the enactment of a joint
7 resolution described in subsection (a), then, effective
8 with regard to the first fiscal year beginning at least
9 12 months after the enactment of that resolution,
10 the provisions of subsection (b) triggered by that
11 resolution are no longer effective.

12 **SEC. 708. ALTERNATE SPENDING REDUCTION LEGISLATION**
13 **IN THE HOUSE OF REPRESENTATIVES.**

14 (a) INTRODUCTION OF JOINT RESOLUTION.—At any
15 time after the Director of OMB issues a final order for
16 a fiscal year, but before the end of the session of Congress
17 in session on the date of the issuance of such order, the
18 majority leader of the House of Representatives may in-
19 troduce a joint resolution which contains provisions direct-
20 ing the President to modify the most recent final order
21 issued pursuant to this title, or provide an alternative to
22 eliminate the spending excess for such fiscal year or years.
23 After the introduction of the first such joint resolution in
24 either House of Congress in any calendar year, then no

1 other joint resolution introduced pursuant to this section
2 shall be subject to the procedures set forth in this section.

3 (b) PROCEDURES FOR CONSIDERATION OF JOINT
4 RESOLUTIONS.—

5 (1) Any committee of the House of Representa-
6 tives to which an alternative spending compliance
7 measure is referred shall report it to the House
8 without amendment not later than the seventh legis-
9 lative day after the date of its introduction. If a
10 committee fails to report the bill within that period
11 or the House has adopted a concurrent resolution
12 providing for adjournment sine die at the end of a
13 Congress, it shall be in order to move that the
14 House discharge the committee from further consid-
15 eration of the bill. Such a motion shall be in order
16 only at a time designated by the Speaker in the leg-
17 islative schedule within two legislative days after the
18 day on which the proponent announces his intention
19 to offer the motion. Such a motion shall not be in
20 order after a committee has reported a spending
21 compliance measure with respect to that special mes-
22 sage or after the House has disposed of a motion to
23 discharge with respect to that special message. The
24 previous question shall be considered as ordered on
25 the motion to its adoption without intervening mo-

tion except twenty minutes of debate equally divided and controlled by the proponent and an opponent. If such a motion is adopted, the House shall proceed immediately to consider the spending compliance measure bill in accordance with paragraph (3). A motion to reconsider the vote by which the motion is disposed of shall not be in order.

(2) After a spending compliance measure is reported or a committee has been discharged from further consideration, or the House has adopted a concurrent resolution providing for adjournment sine die at the end of a Congress, it shall be in order to move to proceed to consider the spending compliance measure in the House. Such a motion shall be in order only at a time designated by the Speaker in the legislative schedule within two legislative days after the day on which the proponent announces his intention to offer the motion. Such a motion shall not be in order after the House has disposed of a motion to proceed with respect to that special message. The previous question shall be considered as ordered on the motion to its adoption without intervening motion. A motion to reconsider the vote by which the motion is disposed of shall not be in order.

(3) The spending compliance measure shall be considered as read. All points of order against an approval bill and against its consideration are waived. The previous question shall be considered as ordered on an approval bill to its passage without intervening motion except five hours of debate equally divided and controlled by the proponent and an opponent and one motion to limit debate on the bill. A motion to reconsider the vote on passage of the bill shall not be in order.

(4) A spending compliance measure received from the Senate shall not be referred to committee.

(c) VOTING.—The vote on final passage of a joint resolution or conference report thereon referred to in paragraph (1) shall require approval of not less than three-fifths of the Members of the House of Representatives.

**SEC. 709. ALTERNATE SPENDING REDUCTION LEGISLATION
IN THE SENATE.**

(a) INTRODUCTION OF JOINT RESOLUTION.—At any time after OMB issues a final order for a fiscal year, but before the end of the session of Congress in session on the date of the issuance of such order, the majority leader of either House of Congress may introduce a joint resolution which contains provisions directing the President to modify the most recent final order provide an alternative

1 to eliminate the spending excess for such fiscal year or
2 years. After the introduction of the first such joint resolu-
3 tion in either House of Congress in any calendar year,
4 then no other joint resolution introduced in such House
5 in such calendar year shall be subject to the procedures
6 set forth in this section.

7 (b) PROCEDURES FOR CONSIDERATION OF JOINT
8 RESOLUTIONS.—

9 (1) REFERRAL TO COMMITTEE.—A joint resolu-
10 tion introduced in the Senate under subsection (a)
11 shall not be referred to a committee of the Senate
12 and shall be placed on the calendar pending disposi-
13 tion of such joint resolution in accordance with this
14 subsection.

15 (2) CONSIDERATION IN THE SENATE.—On or
16 after the third calendar day (excluding Saturdays,
17 Sundays, and legal holidays) beginning after a joint
18 resolution is introduced under subsection (a), not-
19 withstanding any rule or precedent of the Senate, in-
20 cluding rule XXII of the Standing Rules of the Sen-
21 ate, it is in order (even though a previous motion to
22 the same effect has been disagreed to) for any Mem-
23 ber of the Senate to move to proceed to the consider-
24 ation of the joint resolution. The motion is not in
25 order after the eighth calendar day (excluding Sat-

1 urdays, Sundays, and legal holidays) beginning after
2 a joint resolution (to which the motion applies) is in-
3 troduced. The joint resolution is privileged in the
4 Senate. A motion to reconsider the vote by which the
5 motion is agreed to or disagreed to shall not be in
6 order. If a motion to proceed to the consideration of
7 the joint resolution is agreed to, the Senate shall im-
8 mediately proceed to consideration of the joint reso-
9 lution without intervening motion, order, or other
10 business, and the joint resolution shall remain the
11 unfinished business of the Senate until disposed of.

12 (3) DEBATE IN THE SENATE.—

13 (A) In the Senate, debate on a joint resolu-
14 tion introduced under subsection (a), amend-
15 ments thereto, and all debatable motions and
16 appeals in connection therewith shall be limited
17 to not more than 10 hours, which shall be di-
18 vided equally between the majority leader and
19 the minority leader (or their designees).

20 (B) A motion to postpone, or a motion to
21 proceed to the consideration of other business is
22 not in order. A motion to reconsider the vote by
23 which the joint resolution is agreed to or dis-
24 agreed to is not in order, and a motion to re-
25 commit the joint resolution is not in order.

1 (C)(i) No amendment that is not germane
2 to the provisions of the joint resolution shall be
3 in order in the Senate. In the Senate, an
4 amendment, any amendment to an amendment,
5 or any debatable motion or appeal is debatable
6 for not to exceed 30 minutes to be equally di-
7 vided between, and controlled by, the mover and
8 the majority leader (or their designees), except
9 that in the event that the majority leader favors
10 the amendment, motion, or appeal, the minority
11 leader (or the minority leader's designee) shall
12 control the time in opposition to the amend-
13 ment, motion, or appeal.

14 (ii) In the Senate, an amendment that is
15 otherwise in order shall be in order notwith-
16 standing the fact that it amends the joint reso-
17 lution in more than one place or amends lan-
18 guage previously amended. It shall not be in
19 order in the Senate to vote on the question of
20 agreeing to such a joint resolution or any
21 amendment thereto unless the figures then con-
22 tained in such joint resolution or amendment
23 are mathematically consistent.

24 (4) VOTE ON FINAL PASSAGE.—Immediately
25 following the conclusion of the debate on a joint res-

olution introduced under subsection (a), a single quorum call at the conclusion of the debate if requested in accordance with the rules of the Senate, and the disposition of any pending amendments under paragraph (3), the vote on final passage of the joint resolution shall occur.

(5) APPEALS.—Appeals from the decisions of the Chair shall be decided without debate.

(6) CONFERENCE REPORTS.—In the Senate, points of order under titles III and IV of the Congressional Budget Act of 1974 are applicable to a conference report on the joint resolution or any amendments in disagreement thereto.

(7) RESOLUTION FROM OTHER HOUSE.—If, before the passage by the Senate of a joint resolution of the Senate introduced under subsection (a), the Senate receives from the House of Representatives a joint resolution introduced under subsection (a), then the following procedures shall apply:

(A) The joint resolution of the House of Representatives shall not be referred to a committee and shall be placed on the calendar.

(B) With respect to a joint resolution introduced under subsection (a) in the Senate—

1 (i) the procedure in the Senate shall
2 be the same as if no joint resolution had
3 been received from the House; but

4 (ii)(I) the vote on final passage shall
5 be on the joint resolution of the House if
6 it is identical to the joint resolution then
7 pending for passage in the Senate; or

8 (II) if the joint resolution from the
9 House is not identical to the joint resolu-
10 tion then pending for passage in the Sen-
11 ate and the Senate then passes the Senate
12 joint resolution, the Senate shall be consid-
13 ered to have passed the House joint resolu-
14 tion as amended by the text of the Senate
15 joint resolution.

16 (C) Upon disposition of the joint resolution
17 received from the House, it shall no longer be
18 in order to consider the resolution originated in
19 the Senate.

20 (8) SENATE ACTION ON HOUSE RESOLUTION.—

21 If the Senate receives from the House of Represent-
22 atives a joint resolution introduced pursuant to this
23 section after the Senate has disposed of a Senate
24 originated resolution which is identical to the House
25 passed joint resolution, the action of the Senate with

1 regard to the disposition of the Senate originated
2 joint resolution shall be deemed to be the action of
3 the Senate with regard to the House originated joint
4 resolution. If it is not identical to the House passed
5 joint resolution, then the Senate shall be considered
6 to have passed the joint resolution of the House as
7 amended by the text of the Senate joint resolution.

8 (9) The vote on final passage of a joint resolu-
9 tion or conference report thereon referred to in para-
10 graph (1) shall require approval of not less than
11 three-fifths of the Members of the Senate.

12 **SEC. 710. GENERAL PROVISIONS.**

13 (a) **LOW GROWTH REPORT.**—OMB and CBO shall
14 notify the Congress if—

15 (1) during the period consisting of the quarter
16 during which such notification is given, the quarter
17 preceding such notification, and the 4 quarters fol-
18 lowing such notification, OMB or CBO has deter-
19 mined that real economic growth is projected or esti-
20 mated to be less than zero with respect to each of
21 any 2 consecutive quarters within such period; or

22 (2) the most recent of the Department of Com-
23 merce's advance preliminary or final reports of ac-
24 tual real economic growth indicate that the rate of
25 real economic growth for each of the most recently

1 reported quarter and the immediately preceding
2 quarter is less than one percent.

3 (b) ECONOMIC AND TECHNICAL ASSUMPTIONS.—For
4 all purposes of this title, OMB shall use the same eco-
5 nomic and technical assumptions as used in the most re-
6 cent budget submitted under section 1105(a) of title 31,
7 United States Code.

8 (c) SOCIAL SECURITY TRUSTEE REPORT.—The
9 Trustees of the Social Security Administration shall annu-
10 ally issue a report consistent with section 708(c) and OMB
11 shall include such report in a final order and a preview
12 order.

13 (d) CONGRESSIONAL SPENDING LIMIT.—(1) The
14 Congressional Budget and Impoundment Control Act of
15 1974 is amended by adding at the end of title III the fol-
16 lowing new section:

17 **“SEC. 316 AGGREGATE SPENDING LIMITS.**

18 “It shall not be in order in the House of Representa-
19 tives or the Senate to consider any bill, joint resolution,
20 amendment, motion, or conference report that would cause
21 an excess spending amount, as defined in section
22 701(c)(16) of the Budget Control Act of 2008.”.

23 (2) The table of contents set forth in section 1(b) of
24 the Congressional Budget and Impoundment Control Act

1 of 1974 is amended by inserting after the item relating
2 to section 315 the following new item:

“Sec. 316. Aggregate spending limits.”.

3 (e) CONGRESSIONAL REVENUE LIMITS.—(1) The
4 Congressional Budget Act of 1974 (as amended by sub-
5 section (d)) is further amended by adding at the end of
6 title III the following new section:

7 **“SEC. 317. TAX RATE LIMITS.**

8 “It shall not be in order in the House of Representa-
9 tives or the Senate to consider any bill, joint resolution,
10 amendment, motion, or conference report that would cause
11 aggregate Federal revenue levels, in any fiscal year, to ex-
12 ceed the percentage of revenue relative to the Gross Do-
13 mestic Product set forth in subsection (b) unless so deter-
14 mined by a vote of not less than three-fifths of the Mem-
15 bers voting, a quorum being present.”.

16 (2) The table of contents set forth in section 1(b) of
17 the Congressional Budget and Impoundment Control Act
18 of 1974 is amended by inserting after the item relating
19 to section 316 the following new item:

“Sec. 317. Tax rate limits.”.

20 (f) FISCAL YEARS OF THE GUIDELINE PERIOD.—
21 The fiscal years within the 75-year period referred to as
22 a guideline period in this title shall be as follows:

23 (1) Fiscal year 2009: 19.9 percent.

24 (2) Fiscal year 2010: 19.8 percent.

- 1 (3) Fiscal year 2011: 20.0 percent.
- 2 (4) Fiscal year 2012: 20.1 percent.
- 3 (5) Fiscal year 2013: 20.2 percent.
- 4 (6) Fiscal year 2014: 20.1 percent.
- 5 (7) Fiscal year 2015: 20.1 percent.
- 6 (8) Fiscal year 2016: 20.2 percent.
- 7 (9) Fiscal year 2017: 20.3 percent.
- 8 (10) Fiscal year 2018: 20.4 percent.
- 9 (11) Fiscal year 2019: 20.5 percent.
- 10 (12) Fiscal year 2020: 20.7 percent.
- 11 (13) Fiscal year 2021: 21.5 percent.
- 12 (14) Fiscal year 2022: 21.7 percent.
- 13 (15) Fiscal year 2023: 22.0 percent.
- 14 (16) Fiscal year 2024: 22.3 percent.
- 15 (17) Fiscal year 2025: 22.5 percent.
- 16 (18) Fiscal year 2026: 22.3 percent.
- 17 (19) Fiscal year 2027: 22.6 percent.
- 18 (20) Fiscal year 2028: 22.9 percent.
- 19 (21) Fiscal year 2029: 23.1 percent.
- 20 (22) Fiscal year 2030: 23.2 percent.
- 21 (23) Fiscal year 2031: 23.9 percent.
- 22 (24) Fiscal year 2032: 23.9 percent.
- 23 (25) Fiscal year 2033: 23.9 percent.
- 24 (26) Fiscal year 2034: 23.9 percent.
- 25 (27) Fiscal year 2035: 24.0 percent.

1	(28) Fiscal year 2036: 24.2 percent.
2	(29) Fiscal year 2037: 24.2 percent.
3	(30) Fiscal year 2038: 24.3 percent.
4	(31) Fiscal year 2039: 24.1 percent.
5	(32) Fiscal year 2040: 24.1 percent.
6	(33) Fiscal year 2041: 24.7 percent.
7	(34) Fiscal year 2042: 24.5 percent.
8	(35) Fiscal year 2043: 24.5 percent.
9	(36) Fiscal year 2044: 24.4 percent.
10	(37) Fiscal year 2045: 24.3 percent.
11	(38) Fiscal year 2046: 24.2 percent.
12	(39) Fiscal year 2047: 24.2 percent.
13	(40) Fiscal year 2048: 24.0 percent.
14	(41) Fiscal year 2049: 24.0 percent.
15	(42) Fiscal year 2050: 24.0 percent.
16	(43) Fiscal year 2051: 23.8 percent.
17	(44) Fiscal year 2052: 23.6 percent.
18	(45) Fiscal year 2053: 23.4 percent.
19	(46) Fiscal year 2054: 23.3 percent.
20	(47) Fiscal year 2055: 23.2 percent.
21	(48) Fiscal year 2056: 23.0 percent.
22	(49) Fiscal year 2057: 22.9 percent.
23	(50) Fiscal year 2058: 22.7 percent.
24	(51) Fiscal year 2059: 22.7 percent.
25	(52) Fiscal year 2060: 22.4 percent.

1	(53) Fiscal year 2061: 22.2 percent.
2	(54) Fiscal year 2062: 22.0 percent.
3	(55) Fiscal year 2063: 21.8 percent.
4	(56) Fiscal year 2064: 21.7 percent.
5	(57) Fiscal year 2065: 21.5 percent.
6	(58) Fiscal year 2066: 21.2 percent.
7	(59) Fiscal year 2067: 20.8 percent.
8	(60) Fiscal year 2068: 20.5 percent.
9	(61) Fiscal year 2069: 20.1 percent.
10	(62) Fiscal year 2070: 19.9 percent.
11	(63) Fiscal year 2071: 19.7 percent.
12	(64) Fiscal year 2072: 19.6 percent.
13	(65) Fiscal year 2073: 19.4 percent.
14	(66) Fiscal year 2074: 19.2 percent.
15	(67) Fiscal year 2075: 18.9 percent.
16	(68) Fiscal year 2076: 18.5 percent.
17	(69) Fiscal year 2077: 18.0 percent.
18	(70) Fiscal year 2078: 17.5 percent.
19	(71) Fiscal year 2079: 17.3 percent.
20	(72) Fiscal year 2080: 16.9 percent.
21	(73) Fiscal year 2081: 16.5 percent.
22	(74) Fiscal year 2082: 16.0 percent.
23	(75) Fiscal year 2083: 16.0 percent.

1 **SEC. 711. EFFECTIVE DATE.**

2 This title shall apply to fiscal year 2009 and subse-
3 quent fiscal years.

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